REPORTS OF CASES

DETERMINED

IN THE

COURT OF NIZAMUT ADAWLUT,

FOR 1854.

WITH AN INDEX

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CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

A. DICK, AND J. DUNBAR, ESQS., *Judges.*

Nuddea.

1854.

SEELIM SHEIKH AND OTHERS,

versus

RAGHUB CHUNDER TURUFDAR (No. 14,) BHUGOBAN GHOSE (No. 16,) BOIKUNT DASS (No. 17,) RAM GHOSE (No. 18,) AND MADHUB RAJBUNGSHEE (No. 2.)

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Case of RAGHUB TURUFDAR and others.

The prisoners acquitted on appeal. The evidence against the prisoners though apparently very strong, consisted entirely of testimony, which was found to be very untrustworthy in itself, utterly inconsistent with other testimony of police officers, and uncorroborated by any palpable proof.

CRIME CHARGED.—1st, riot and attacking village of Moharajpore; 2nd, riot and resisting the police in the execution of their duty; 3rd, riot attended with the wounding of Maghai Khatgeer and carrying him off on an elephant; 4th, riot and plunder of the houses of Kalachand Pundit and others.

CRIME ESTABLISHED.—Riotous attack on the village of Moharajpore, attended with the resistance of the police in the execution of their duty with the wounding and carrying off Maghai and with the plunder of the houses of Kalachand Pundit and others.

Committing Officer.—Mr. J. E. S. Lillie, magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 15th May, 1854.

Remarks by the sessions judge.—This is one of the wickedest outrages I ever tried. The convicted prisoners have been found guilty, on abundant and on most unusually unexceptionable evidence. Eight men in all were under trial, of whom one Shiboopershad, named by the witnesses as a leader in the attack, absconded on the last day of the trial, five have been convicted and two acquitted. For some time past disputes had been raised

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between one Jugessor Baboo and Mr. Patrick Smith, proprietor of the neighbouring indigo factory at Bansburea, relative to the village of Moharajpore, and the thannah jemadar with four burkundazes had for several months been stationed at this village to keep the peace between the parties. On the morning of 12th February last, Moharajpore was attacked by a party of many hundred men, connected or supposed to be connected with the Bansburea factory; Maghai a servant of Jugessor Baboo was speared and carried off on an elephant as if he were dead; the thannah jemadar Gholamalee was felled and became insensible from the blow inflicted; Juggoo Singh burkundaz had his leg pierced with a bamboo *surkee*, the houses of many villagers were completely gutted, and the cattle of others were driven away.

The above facts are proved by abundant and irresistible evidence; considering the tumult and the bloodshed and the many houses plundered, it need not be wondered at if the parties present and suffering were staggered and dismayed, but very little allowance has to be made for oversight or discrepancies which have sometimes to be deplored in cases more or less depending on opposing enmities. Shortly after the attacking party had retired, the jemadar sent a burkundaz (Kootooboodeen) to report the affair to the darogah, with him went Teenoo chowkeedar, and next day arrived the darogah at Moharajpore.

The jemadar had not gone to that part of the village where the first violence was committed by the attack on Maghai, and the plundering of the houses of Bhugoban Ghose and others, but immediately after the mob pressed on to where the police were gathered. The jemadar states that not till after the burkundaz left him, did he hear of the wounding of Maghai, but the chowkeedar states he knew of it before and there is a very peculiar expression given in the deposition made by him to the darogah! by which he referred the darogah to the village itself, to learn the extent of the outrage inflicted. But the wounding and removal of Maghai was prominently brought to the darogah's notice on his arrival.

There is observable an obvious leaning on the part of the police to screen the assailants. The jemadar and burkundazes describe plainly enough the attack made on themselves and the plundering of the villagers' houses; but though they saw the rioters and tried to stop them before the attack began and afterwards through the progress of the disturbances, they resolutely say not only that the rioters were strangers to them, but that they could not recognize any of them again.

For the defence it is said this charge was got up as an afterthought, to save the Moharajpore people from the accusation of firing the golah of Raghub Turufdar a leading prisoner, in the neighbouring village of Parouparah. But it is clear that this alleged arson occurred after the other crime; and it may be added

that though Parouparah is not above six miles from the thannah, notice of the occurrence was not given to the darogah till night; and that the first statement of Neelmonee burkundaz who professed to witness the occurrence is full of suspicion: Parouparah is less than a mile off Maharajpore; and the burkundaz stated that he saw thirty men retire into Moharajpore where he did not follow them; a very unintelligible statement, as he could not but have known that a jemadar and burkundazes were there stationed for the protection of the public peace. And it is an obvious remark that though the defendants urge the previous cases instituted between the parties as a ground of malice, the enmity indicated may also be taken as preliminary evidence of a readiness to undertake the present outrage.

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The evidence for the prosecution is irresistible. As regards the identity of the prisoners, twenty-four men named Raghub Turufdar; Madhub Ghose was named by the same number, and so on. Several witnesses for the prosecution were not examined; Raghub Turufdar attempted to prove that he was in Kishnagur when the crime was committed: and one point was that on the morning of the attack he had accompanied one Deenonath Bhunj to the public dispensary where the latter had gone for physic; but it is to be remarked that not only was the prisoner's evidence insufficient, but that Deenonath Bhunj himself was one of the parties denounced to the darogah immediately he arrived at the village, and that Moharajpore is only about five miles from the station. The outrage seems to have terminated by 8 or 9 o'clock: and it was perfectly possible for a party concerned to appear in town, early in the forenoon of the same day.

The jury convicted all these five prisoners.

Sentence passed by the lower court.—No. 14, imprisonment for seven years and two years in lieu of stripes, being in aggregate to nine years with labor without irons. Nos. 16 and 17, five years ditto, and Nos. 18, and 2, seven years ditto.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) The investigation of this case has been most tedious, perplexing and unsatisfactory, attributable mainly, if not entirely, to the disgraceful supineness and cowardice of the police officers present, or to their still more disgraceful dishonesty.

In consequence of frequent complaints of violence preferred to the magistrate by both Mr. Smith, the indigo-planter, and the prisoner, Raghub Turufdar, on the one side, and Jugessor Dur, puteedar of Moharajpore on the other, against each other, the magistrate had stationed a jemadar and four burkundazes at the village of Moharajpore, some months previous to the alleged occurrence of the outrage; for which the petitioners have been convicted and sentenced by the sessions judge. The occurrence of the outrage by, as at first alleged, 3,000 persons, and then four or five

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hundred, headed by the gomastahs of Mr. Smith's factories, and by Raghub Turufdar, on an elephant and on horses, with the wounding and carrying away of Maghai, a letter-carrier of the Durputeedar, Jugessor, missing ever since, and the knocking down of the jemadar, and wounding of one of the burkundazes, and the plundering of the houses of the ryots of Moharajpore, together with the recognition of the petitioners at the outrage, have been deposed to by twenty-four eye-witnesses, abundant, as observed by the sessions judge, to prove the facts, and the complicity therein of the prisoners, if found to be credible. A close examination, however, into the case, and a consideration of the whole of the evidence adduced, and adverting likewise to what ought to have been, but has not been produced, induce us to regard the testimony of the eye-witnesses as too untrustworthy to warrant a conviction on it. The witnesses, to the number of twenty-three, have repeatedly given their evidence in cases between the parties, principally concerned in the alleged outrage. Some of them so often as ten times, and only one of them so seldom as twice. Thirteen out of the twenty, who have deposed to the recognition of the convict, Raghub, deposed likewise to the recognition of Bistoo Chunder Biswas, (as noticed by Mr. Waller,) whose witnesses, three European gentlemen, testified to his being at a factory, twelve miles distant, at the very time of the outrage: he was accordingly acquitted by the sessions court. It is to be observed, that Bistoo Chunder must have been as conspicuous, being mounted on an elephant, (on which too the wounded Maghai was carried off,) as Raghub, mounted on a horse, and both were persons of note in that part of the country. One a gomastah of Mr. Smith, and the other a grain-merchant, and late lessee of Moharajpore. The jemadar and four burkundazes of the thannah were present and so near to the rioters, as for one of them to be knocked down, and another wounded; yet not one of them recognized either of the gomastahs or Raghub, or indeed any one of the rioters, though their persons must have been familiar to them, if the eye-witnesses have testified truly; and the leaders were conspicuous on the elephant and the horses. The jemadar indeed deposed that the rioters were strangers, *beedeyshee*. Of the letter-carrier Maghai, little has transpired. He was an inhabitant of another district, and at first alleged to have no relatives. After four days, an alleged brother came forward and made inquiries, having heard of his death, yet he did not prefer any complaint, or become a prosecutor till the 15th March, a month after! No trace has however, been discovered of Maghai, since the alleged carrying of him away on the elephant; and neither the jemadar, nor the burkundazes followed after those who had dared to remove him, so as to secure the body. There is, therefore, nothing palpable, nothing on which the mind can rest with any confidence, to

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substantiate the testimony of the eye-witnesses; except indeed a strange story of some drops of blood having been seen on leaves lying on the spot where Maghai fell wounded, which were not brought to the notice of the darogah, or at least not inquired into by him till two days after his arrival at the scene of the outrage. It is in evidence that the village of Moharajpore contains about five hundred habitations, and from twelve to twenty wealthy respectable persons reside there, yet, though a host of eye-witnesses to the plundering have been adduced, not one of those respectable persons was summoned to testify to the truth of the riot and pillage. These persons were not molested, which fact added to their independent condition and character, would have rendered their evidence of the utmost value. Moreover, none of the plunder was traced or recovered. The vestige of the blow on the head which felled the jemadar, and rendered him insensible, and marks of beating were perceptible when he was examined by the magistrate; but very trifling; and no vestige of the spear wound on the foot of one of the burkundazes.

In fine, as there was no circumstantial proof of the outrage, the magistrate directed the darogah to make inquiry regarding the assemblage of such a large body of rioters. He reported that neither the rioters, nor the elephant, which carried off the wounded man, had been seen, either going or returning through the villages which are situated between the factory Bansbureea and Moharajpore.

Thus then the actual occurrence of the daring outrage, together with every one of its attendant aggravating incidents, rests solely and entirely on the testimony of the eye-witnesses. Mr. Norris, for the prisoners, has pointed out and commented at great length on several discrepancies in the depositions of those witnesses; and Baboo Sumbhoonath Pundit, has ably and carefully endeavoured to shew that they were not such as to warrant the Court to reject the evidence totally. It is however unnecessary here to notice them in detail. The glaring instance of untruthfulness, stated above, in regard to the recognition of Bistnoo, acquitted, and the contradictory evidence of the police, are sufficient to destroy all confidence in their testimony, uncorroborated as they are by anything palpable, on which belief can rely.

Therefore the Court, not satisfied with the evidence against the prisoners, petitioners, acquit them and direct their immediate release.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

Rungpore.

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Case of BHOONREAH DOSS.

Prisoner convicted of a rape committed eight years ago, and sentenced to twelve years' imprisonment, as having been the principal instigator of the crime for which his accomplices were punished at the time.

GOVERNMENT,

vessus

BHOONREAH DOSS.

CRIME CHARGED.—1st count, rape on Mussummut Chemree, on 24th June, 1846, corresponding with 11th Assar, 1253, B. S.; 2nd count, being present, aiding and abetting in the same; 3rd count, entering the house of Kishnye (deceased) in the night and wounding him and his wife, Mussummut Sundhya.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 8th June, 1854.

Remarks by the sessions judge.—On the night of the 24th June, 1846, the house of Kishnye Doss was entered* by prisoner and eight others, who beat him and his wife and carried† off his daughter, Chemree, to a spot about a mile off, where they in succession either committed‡ or aided in committing a rape on her person, and prisoner then deputed to conduct her home, repeated the violence on the road. She returned home shortly before day light and told her parents what had occurred, and her statement was borne out by the blood on her thighs. Before her return, the witnesses, named in the margin,§ had gone to her father's house, seen the marks on his and his wife's persons and heard from them what they knew of the occurrence. Information was given at the thannah and the eight accomplices of prisoner (who himself had fled) were apprehended, confessed at the thannah, more or less implicating prisoner as the instigator and leader, and before the magistrate seven of them confessed to having perpetrated the rape or aided therein. The eight were convicted* at the sessions and the trial being reported to the Nizamut Adawlut, were sentenced, those concerned in the rape alone, to nine and others convicted in other cases also to twelve years' impri-

Witnesses
No. 1, Musst. Chemree.
2, Sundhya Bewa.
3, Unturam.
4, Dooshoo.
5, Netoo.

† 1, Musst. Chemree.
2, Sundhya Bewa.
3, Unturam.
5, Netoo.

‡ 1, Musst. Chemree.

§ Witness No. 2, (the father has died since the 1st trial).
No. 8, Modhoo.
„ 9, Ullee.

* Sessions judge's report No. 78, of the 19th September, 1846, and order of the Nizamut Adawlut of the 19th October, 1846.

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sonment with labor in irons. The prisoner was apprehended on the 26th January last, by witnesses 6 and 7, stimulated by the hope of reward, held out by the police, and the fact of his being the party concerned in the crime was fully proved.* He also confessed at the thannah.† In his defence here, he did not deny that he was the person accused of the rape, but alleged that he had left the village when the crime was committed, ten or eleven years ago, that is two or three years before the occurrence, and had since lived about eighteen miles off. The witnesses to his defence testify that he came to their village five or six years ago and called himself Dhununjoy Mistree, by which name alone they knew him till his apprehension.

Witnesses.
* No. 1, Musst. Chemree.
,, 2, Sundhya Bewa.
,, 3, Unturam.
,, 4, Dooshoo.
,, 5, Netoo.
,, 8, Mudhoo.
,, 9, Ullee.
† No. 10, Chatoo.
,, 11, Rutee Doss.

Futwa of the law officer.—The law officer convicted the prisoner on full legal proof of the 1st charge and on violent presumption of the 3rd, in which I concur. The evidence, now given by the witnesses, does not tally precisely with their statements in the former trial, but I do not consider its credibility at all affected by the discrepancies which do not touch the main facts of the case, and are only what might be expected, after the lapse of eight years. In one point only has the evidence become weaker, and that is whether the prisoner was or was not the instigator and leader in the outrage. In the former trial, it appeared that he was so from the evidence; 1st, of the victim's father, since deceased, who had refused his proposal of marriage with the girl on account of his bad character; 2nd, of the witnesses in the present case, who now, however, appear to have nearly and some altogether forgotten the circumstance, and 3dly, from the confessions of the other criminals.

Opinion and recommendation of the sessions judge.—On these grounds, I consider that if apprehended at the time, he would have been sentenced to a severer punishment than his accomplices. I see no reason why his escape for so many years should weaken the effect of the testimony before given, as there is no doubt that he is the person then testified against. I would, therefore, with reference to his being the instigator, to his repeating the outrage, which I see no reason to doubt, and to the conviction on the 3rd charge (overlooked apparently in the first trial) propose to sentence him to twelve years' imprisonment with labor in irons, being three years more than his accomplices.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner was named by the girl, Chemree, in 1846, when several other parties, charged with the same offence, as the prisoner before us, were convicted. The five witnesses now examined, amongst them the mother of

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Chemree were also examined at the former* trial, and named the prisoner as the instigator of the assault; he has absconded for years and lived under a feigned name and was only apprehended in January last. An *alibi* is set up in defence, but the evidence adduced is by no means in his favor. We confirm the sentence proposed by the officiating sessions judge.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

GOVERNMENT,

versus

MUSSUMUT KANCHANIA.

Tirhoot.

1854.

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Case of MUSST KANCHANIA.

Prisoner convicted of the wilful murder by poison of her husband and mother-in-law, with a view to carry on her illicit intercourse with her paramour. Capital sentence issued.

CRIME CHARGED.—Wilful murder of Bhata Dosadh and Musst. Sahiab by poisoning.

Committing Officer.—Mr. R. B. Chapman, assistant magistrate of Tirhoot.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 10th June, 1854.

Remarks by the sessions judge.—The Government being prosecutor, the prisoner, Musst. Kanchania, was indicted for the wilful murder of her husband and mother-in-law by poisoning them. Another person, one Mohun Gorait, charged with accessaryship before the fact and privity to that crime committed with her having been tried and acquitted by the concurring verdict of my law officer and myself, and I refer the trial for the final order of the Nizamut Adawlut in respect of Mussumut Kanchania, because we agree in convicting her of the crime of administering poison with intent to commit murder from which two persons died.

The circumstances of the case, as elicited from the record and evidence, are these:—Musst. Kanchania, who lived in mouzah Malin, carried on a criminal intercourse with her brother-in-law, one Benee, the chowkeedar of mouzah Kurruah, but whose home was in mouzah Alpoorah, where also the prisoner's father-in-law resides, the said Benee accused of being an accomplice in his paramour's crime and for whose apprehension process has been issued, not having yet been apprehended, and it appears that in consequence of the deceased's dissuading and preventing Musst. Kanchania from carrying on the criminal connexion with her brother-in-law, Benee, she administered to them some poisonous article by mixing it in food, of which they both partook and died.

Information was given at the police chowkey of Lonkaha by

the witness, Bustee Gorait, No. 18, on the 16th March, the date of the occurrence being the 15th, or day preceding, or 1st Chyte 1261, F. S., to the effect that he found Mussumut Kanchania on the night before crying and calling out that her husband and mother-in-law, who had been sleeping on the same bed were both dead, and the villagers having collected saw them both lying dead.

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The only person adduced as an eye-witness is one Thittar, No. 1, the chowkeedar of mouzah Alporah, who having originally been a defendant was made a witness and his deposition taken without oath in the foujdary court. Examined, however, on oath in this court, conformably to the Circular Order No. 4 of the 2nd January last, he deposed that Benee and the acquitted prisoner, Mohun Gorait, came to him in the month of Falgoon, six days before the occurrence, and took him with them to a place near Alporah, called Kunowlee bazar, where Benee in his (witness's) presence purchased from a buniya two pice worth or two small pieces of some poison steeped in oil, which, on being cut, presented a white appearance, and on the buniya's asking Benee for what purpose he required the poison, the latter replied that he had a painful swelling in his body for which he wished to apply it; that Benee gave the poison in his (witness's) presence to Mohun Gorait, who tied it up in a knot in his clothes, and they all left the shop; that as they were going, Benee said to him (witness), Mohun is going to my sister-in-law, Mussumut Kanchania, do you accompany him; which he (witness) accordingly did; that Mohun in his (witness's) presence gave Mussumut Kanchania the poison, telling her that Benee had desired him to tell her to give it to her husband and that when he died he (Benee) would marry her; that he (witness) and Mohun remained there that night and came away early next morning, and after the lapse of four days he (witness) heard that the husband and mother-in-law of Mussumut Kanchania having been poisoned by her had died. This witness also deposed that Mussumut Kanchania carried on an illicit intercourse with Benee.

As circumstantial evidence, four* of the neighbours deposed that hearing the uproar, they repaired to the spot, where they saw the two deceased persons lying senseless and tossing about, both of whom expired in their (witnesses') presence and that the prisoner, Mussamut Kanchania, who was sitting at the door, made an attempt to run away, on which the witness, No. 10, drove her inside the house in order to secure her, whence however, she again got out by making an aperture in the matted wall of the house, upon which the same witness laid hold of her on the outside.

* No. 10, Hunoman Chowkeedar.
,, 11, Lutchmun.
,, 12, Agwan.
,, 13, Bustee.

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Three witnesses,* deposed to being present the morning after the deceased died, when witness, No. 10, asked Mussumut Kanchania what had happened to them, to which she answered in their hearing that she had given them poison, from which they died.

* No. 10, Hunoman Chowkeedar.
,, 11, Lutchmun.
,, 12, Agwan.

One witness,† deposed that after returning from giving information at the police chowkey, on his questioning Mussumut Kanchania, she told him that Benee having sent her some poison by Thittar and Mohun, she had mixed it in some *beans*, which she gave to her husband and mother-in-law, from eating which they died.

† No. 18, Bustee Gorait.

Two witnesses,‡ deposed to hearing that Benee Chowkeedar had sent some poison to Mussumut Kanchania by the hand of the witness, Thittar, No. 1, and Mohun Gorait, which she had administered to the deceased, and which caused their deaths.

‡ No. 14, Rajaram.
,, 15, Posun Gorait.

Two witnesses,§ depose to having seen Thittar and another sitting near the house of Mussumut Kanchania, three days before the deceased died.

§ No. 16, Jootee Chowkeedar.
,, 17, Narain Dosadh.

Three witnesses,‖ depose to hearing that Mussamut Kanchania had murdered her husband and mother-in-law by poisoning them.

‖ ,, 20, Runglall Raee.
,, 21, Lutchmun.
,, 22, Sonphul.

Four witnesses,¶ depose to their knowledge of the existence of a criminal intercourse between Benee Chowkeedar and Mussumut Kanchania, from the circumstance of the latter having, fifteen or twenty days before the occurrence which led to this trial, left her husband's house and gone to Benee in mouzah Karruah, where he was chowkeedar, from whence her brother, the witness, No. 27, took her to his house in Alporah, and from there her husband and mother-in-law reconducted her home.

¶ No. 24, Guneshee,
,, 25, Moorlee Jhah.
,, 26 Karee Thakoor.
,, 27, Madhwa Pasban.

The civil assistant surgeon, Dr. Alexander Simpson, deposed to the following effect.

"I examined the bodies of a man named Bhatoo and a woman named Mussumut Suhiya.

"The body of the former was considerably decomposed and without any marks of violence. The *post mortem* appearances were such as are visible in cases of death from asphyxia from narcotism. The stomach contained a few ounces of a brown watery fluid without alimentary matter, and on microscopic

examination of a portion of the contents, a resinous substance resembling opium in small quantities was observed. But from microscopic examination alone, I cannot depose positively that such was the substance. All the organs of the body were healthy, and I could discover no other cause of death.

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"The body of the latter was decomposed to a greater degree than that of the young man. The post mortem appearances were similar to those in him, and the various organs of the body were quite healthy. The stomach contained a considerable quantity of half-digested food, but I could discover nothing on microscopic examination of any thing deleterious. There was no evidence of death from natural causes.

"I also examined the specimens of *dukra* sent in by the joint-magistrate, but its microscopic character so much resembles that of many farinaceous substances containing starch, such as wheat, dholl, rice, &c. that had it been present I could not have distinguished it from the starch grains of some of these substances of alimentary matter."

At the thannah, the prisoner made a voluntary confession attested by subscribing witnesses* to the effect that Jugmohun Berahil having carried on a criminal intercourse with her, he, on the evening of the Wednesday, or day of the occurrence, gave her a piece of white poison, resembling wood, about two barley corns long which he told her to give to her husband and mother-in-law to eat, which, according to his instructions, she mixed in some *beans*, which she cooked and gave them, from eating which they both died. She added that the reason of his (Jugmohun's) giving her the poison to administer to the deceased was that the latter forbid his coming to visit her.

* No. 6, Kumul Saboo, No. 7, Sookha Saboo.

Before the joint-magistrate, the prisoner made a similar confession of her own free will, with no variation on any important particular, this confession too being attested by subscribing witnesses.†

† No. 8, Bhutton Lall, No. 9, Dilshire Khan.

In this court, the prisoner pleaded *not guilty*, all that she said in her defence being a denial of her having either administered poison, or had an illicit connexion with any one, and that it was in consequence of the mohurir and jemadar of the thannah telling her to do so, that she confessed both in the mofussil and before the joint-magistrate, adding that the deceased died from the visitation of God. She had no witnesses to call.

The *futwa* of the law officer convicts the prisoner, on violent presumption, of administering poison to the two persons deceased with intent to commit murder, from which they died, and pronounces her liable to punishment by *acoobut*.

Although from the result of the post mortem examination of the bodies and the evidence of the medical officer, it is not clear

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by the administration of what particular substance death was positively produced, and the prisoner has made statements at variance with each other on the point of who was her paramour, yet independently of no one else being charged or even suspected of having poisoned the deceased, the prisoner plainly confessed both in the mofussil and before the joint-magistrate, that she administered poison of some kind to her deceased relations in some food, from eating which they died. In both these confessions she named Jugmohun Berahil as the person with whom she had a criminal connexion, but in answer to questions put her on the 23rd March, denying an intrigue with that person, she admitted having an illicit intercourse with Benee. There is no evidence to shew that these confessions were either extorted or not spontaneous. I consider too the circumstantial evidence as strongly corroborative of the tenor of the prisoner's voluntary confessions, and of the probability of the motive assigned for her wishing to get rid of her husband, viz., that she might be at liberty to marry or continue her illicit intercourse with her paramour whoever he was.

I concur in the finding of my law officer, which convicts the prisoner of administering poison to her two relations, deceased, with intent to commit murder, and from which they died, and would recommend that she be sentenced to imprisonment in transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. H. T. Raikes.) The prisoner on the 16th March, before the police, confessed that she gave her husband and her mother-in-law some white poison, which had the appearance of a bit of stick, in their dinner, with the intention of poisoning them, by advice of one Jugmohun Berahil. On the 22nd and 23rd idem she made a confession to the same effect before the assistant magistrate, charging, however, one Benee with having instigated her to the act, that having got rid of them he and prisoner might live together. The confessions are duly attested and detail every particular.

The sessions judge and law officer, as shewn in the report, convict the prisoner of administering poison to her two relatives *with intent* to commit the murder, and he proposes a sentence of transportation for life.

Upon perusal of the *futwa*, in which the sessions judge has concurred, we find it distinctly recorded that the intent *and the fact* of death, ensuing on the administration of the poison, are proved.

Both the parties who were murdered died about two hours after the poison was given to them, they were previously in good health, and on post mortem examination the appearances in both bodies were the same, and the various organs were quite healthy.

The prisoner's confessions evince such clear proof of determination to kill her husband and mother-in-law, because they interfered with her amours, and the deed is shewn to have been committed with so much deliberation, that we deem it our duty to sentence the prisoner capitally; no circumstances of mitigation present themselves on the record.

1854. July 3. Case of Musst. Kanchania.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

GOLAUBOODIN (No. 1,) MUSST. AUDERJAUN (No. 2,) SHEIKH CHOONEE (No. 3,) MUSST. ALLUMJAUN BEWAH (No. 4,) RUHEEMOOLLAH (No. 5,) MOTEEOOLLAH (No. 6,) AND AKBUR BEPARY (No. 7.)

Dacca. 1854. July 3. Case of Golauboodin & others.

Prisoners charged as principal and accessaries in a conspiracy to defraud, with several counts varying the nature of the offence, acquitted owing to the unsatisfactory nature of the evidence.

CRIME CHARGED.—Prisoner No. 1, 1st count, having fraudulently and maliciously with the purpose of defrauding Meher Beebee and others, and for the sake of making away with the property of Ameer Beebee deceased (although he was aware that his former Mistress Sabur Beebee alias Oozeer Beebee was not the heir of the said Ameer Beebee, and because she would not complain,) he therefore personated Sufur Beebee by Auderjaun a step-sister of Sabur Beebee after altering her name, and that of her parents and also the name and place of abode of her husband, and in order to prove a relationship between her and Ameer Beebee gave her an alias of Oozeer Beebee and by that fictitious name took a mookhtearnameh in his own name and preferred a pauper complaint; 2nd count, causing a forged mookhtearnamah dated the 16th Assin, 1259, B. S. to be prepared in the above fictitious name and entering therein a false statement; 3rd count, by the aforesaid mookhtearnamah causing a plaint and petition, requesting the admission of a pauper suit to be prepared, dated respectively the 24th Assin, 1259, B. S. corresponding with the 8th October, 1852; 4th count, causing a forged vakalutnameh, dated the 25th Assin, 1259, B. S. to be prepared in the name of Kosseenath Chatterjee vakeel; 5th count, filing in the court on the 8th October, 1852, the above forged mookhtearnameh, petition and plaint and the vakalutnameh, on the 13th December of the same year, and causing the mookhtearnamah and vakalutnameh to be attested, the former on the 30th September and the latter on the 10th December of the same year; 6th count, perjury in having on the 4th December, 1852, or 20th Ugrain, 1259, B. S. intentionally and deli-

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berately deposed under a solemn declaration taken instead of an oath before the judge of Dacca, that there is no other heir to the real and personal property of the deceased Ameer Beebee except his client, i. e. his wife Sabur Beebee, who is the niece of the deceased, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 7th count, perjury in having on the 16th January, 1854, or 4th Magh, 1260, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the judge of Dacca, that his wife alias the client Sabur Beebee as heir to her aunt's movable and immovable property and the mesne profits, had filed a petition as pauper, begging that it might be sanctioned, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case, and 8th count, subornation of perjury in having caused the attendance of Choonee, Allumjaun Bewah, Ruheemoollah, Moteeoollah and Akbur Bepary, witnesses to attest before the judge and Naunah and Emambuxsh to attest before the principal sudder ameen that Sabur Beebee alias Oozeer Beebee was the heir of Ameer Beebee deceased. Prisoner No. 2, 1st count, accessary to the above crimes both before and after their accomplishment; 2nd count, being privy to the above crimes; 3rd count, perjury in having on the 23rd February, 1854 deposed under a solemn declaration taken instead of an oath before the principal sudder ameen of Dacca, that her name was Sabur Beebee alias Oozeer Beebee, daughter of Mahomed Hossein, and wife of Sheikh Ameer an inhabitant of Pergundareeah, and seven or eight years after the death of her husband, she was married to Golauboodin by "*neekha*" and in order to claim the property of her aunt Ameer Beebee she gave a mookhtearnamah to the above Golauboodin, and that except herself and Sookooroollah there are no heirs of Ameer Beebee, who was the sister of Nannee Beebee her mother, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Prisoners Nos. 3 and 4; 1st count, perjury in having on the 15th January, 1853, or 3rd Maugh 1259, B.S. intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the judge of Dacca that they recognize the petitioner Sabur Beebee alias Oozeer Beebee, and that the deceased was her maternal aunt, and that the petitioner Oozeer Beebee is her heir, and besides her there is no other heir, and that she is heir to the property and to all debts payable to and from the deceased, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, being an accessary and privy to the 1st charge against the defendant Golauboodin. Prisoners Nos. 5 and 6; 1st count, perjury in having on the 25th January 1853 or 13th Maugh, 1259, B. S. intentionally and deliberately

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deposed under a solemn declaration taken instead of an oath before the judge of Dacca that they recognize Sabur Beebee alias Oozeer Beebee, that Ameer Beebee is dead, that the petitioner is the daughter of the deceased's sister and that she is her rightful heir and that there is no other heir, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, being accessary to the 1st charge against the defendant Golauboodin. Prisoner No. 7, 1st count, perjury in having on the 17th May, 1853, or 5th Jystee, 1260, B. S. intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the judge of Dacca that he recognises Sabur Beebee alias Oozeer Beebee, that she is daughter of the sister of the deceased Ameer Beebee, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, being accessary and privy to the 1st charge brought against the defendant Golauboodin.

Committing Officer.—Moulvy Mahomed Nazim, principal sudder ameen of Dacca, exercising powers of a magistrate.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 8th June, 1854.

Remarks by the sessions judge.—The prisoner Golauboodin No. 1, presented a mookhtearnameh to the judge on the 30th September, 1852, by which document he was constituted attorney for Sabur Beebee alias Oozeer Beebee his own wife, who was desirous of suing as a pauper and represented herself heiress of Ameer Beebee deceased, valuing the property claimed at Rs. 1,394-6-2½. The mookhtearnameh was entrusted for attestation to an ameen, who declared that Sabur Beebee had duly admitted it as hers. The usual inquiries were made and the prisoners Choonee, Allumjaun, Ruheemoollah, Moteeoollah and Akbur Bepary (Nos. 3 to 7,) deposed, that they knew the applicant to be Sabur Beebee alias Oozeer Beebee, and that she was heiress to Ameer Beebee deceased. The case was then sent to the principal sudder ameen, when on the 31st January, 1854, it was discovered that the whole was a fraud, and on the 2nd March, it was sent to the criminal department. The magistrate on the 30th March directed the principal sudder ameen to investigate the case as deputy magistrate. By the evidence of several witnesses, Nos. 26* to 29, it seems that Ameer Beebee's heiress is Meher Beebee (witness No. 23,) mother of Sadee Beebee No. 24, the divorced wife of the prisoner Golauboodin (prisoner No. 1,) and by the depositions of the witnesses Nos. 30† to 32, that Suffer Beebee and Auderjaun had no names, but those given in the

* No. 26, Hossein Buxsh.
,, 27, Esahuck Khan.
,, 28, Golam Hossein.
,, 29, Rummoo Chuprassee.

† No. 30, Reehumoolla.
,, 31, Omur Ostagur.
,, 32, Ramjan Khan.

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calendar. Suffer Beebee (No. 25,) lived for some time with the prisoner Golauboodin, and says she refused to personate the heiress of Ameer Beebee, deceased, after which Golauboodin took her, the witness' sister, Auderjaun (prisoner No. 2,) and caused her to personate the heiress. The witnesses Nos. 38* and 39, deposed, that Golauboodin prisoner No. 1, took Suffer Beebee to his home and they knew no other Suffer or Sabur Beebee and Nos. 45† and 46, that on one occasion Auderjaun prisoner No. 2, called herself Sabur Beebee alias Oozeer Beebee. They differ slightly as to the position of this prisoner when making the statement.

* No. 38, Khyroo.
,, 39, Doomun.

† No. 45, Konnye Singh Burkundaz.
,, 46, Fukeer Mahomed Burkundaz.

In his reply before the principal sudder ameen on the 2nd and 3rd March, the prisoner Golauboodin denied all knowledge of Auderjaun and said, he had the mookhtearnameh of Sabur Beebee, who died two years before, but admitted an intention of securing the property and dividing it with others. Auderjaun in her reply admitted giving the mookhtearnameh, and the fraud generally instigated by the prisoner No. 1.

In the foujdary the prisoner No. 1, made a partial admission, the others denied their guilt, and in this court, all pleaded *not guilty*. They called witnesses, but nothing was established in their favor.

The law officer, who sat with me on the trial, convicted the prisoners, No. 1 on the 2nd, 4th and 5th counts, Musst. Auderjaun No. 2, of perjury (count 3rd) and acquitted the other prisoners.

I think it established in evidence, that no such person as Sabur Beebee alias Oozeer Beebee, heiress to Ameer Beebee deceased, existed or was even known to the prisoners, but that such heiress was personated by Auderjaun, prisoner No. 2. The fraudulent appropriation of property was by his own admission before the principal sudder ameen on the 3rd March, contemplated by the prisoner No. 1, who for the purpose filed a mookhtearnameh and other papers said to have been executed for or on behalf of Sabur Beebee, which fraud he supported by perjury in which he was assisted by Auderjaun. I convicted the prisoners Golauboodin No. 1, on the counts 1 to 7, and Auderjaun on the counts 1 to 3, in accordance with the *futwa* and I acquitted the prisoners Sheikh Naunah and Emambuxsh, who deposed on oath to the poverty of Sabur Beebee, but the question was so loosely put in the civil court, that it by no means follows, that the prisoners knew to what Sabur Beebee it refered. The alias Oozeer Beebee is not noticed in the depositions.

I do not agree with the law officer, as regards the prisoners Choonee, Allumjaun, Ruheemoollah, Moteeoollah and Akbur

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Bepary Nos. 3 to 7. These persons distinctly deposed, that Sabur Beebee alias Oozeer Beebee was heiress to Ameer Beebee; the best excuse that can be offered for them is, that they deposed to a circumstance of which they knew nothing, for if such an heiress of Ameer Beebee existed as Sabur Beebee, their witnesses would have easily proved it, while the contrary was fully established for the prosecution. Sabur Beebee is said to be now deceased; in one deposition, the prisoner Golauboodin said, she died two years ago, in another in the foujdary in Poos last, some witnesses for the defence speak of a Oozeer Beebee, not an heiress. I would convict these prisoners of perjury and sentence them to five years' imprisonment each, with labor and in irons.

The fraud contemplated was a serious one, and such as is perhaps often perpetrated with impunity and renders the possession of property insecure.

I cannot but remark in the manner the calendar is drawn up. The mookhtearnameh and other papers are numbered as witnesses, and an abstract of the case is given in some of the counts instead of merely the crime charged. I should have returned it, but the delay caused thereby would have materially interfered with the disposal of other sessions cases, now ready for trial.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The sessions judge has convicted the prisoners Golauboodin and Auderjaun of the offences contained in certain counts of the indictment, in concurrence with the *futwa* of the law officer, but has dissented from that officer's verdict regarding the prisoners Nos. 3 to 7, whose guilt he thinks is established.

Regarding these prisoners the reference has been made to this court, but our remarks and orders have been recorded relative to the guilt or innocence of all the prisoners.

We consider the evidence of Essun Chunder and Kally Koomar, coupled with the admissions of the prisoner himself in the foujdary, are sufficient to establish the fact that prisoner No. 1, Golauboodin, caused a fictitious mookhtearnamah to be prepared by Essun Chunder, which the prisoner afterwards filed in court and acted on as the act of Sabur Beebee. The object with which this was done was to promote a lawsuit against Meher Beebee, but whether the facts on which the suit was laid are true, or, as considered by the judge, false and fraudulent, is a matter which cannot be taken into consideration in weighing the prisoner's guilt, as it does not properly belong to the charges brought against him.

The judge has sentenced the prisoner to seven years' imprisonment.

We convict the prisoner as above, and confirm the sentence passed on him by the sessions judge.

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We do not concur with the judge and *futwa* regarding the prisoner Auderjaun. She is convicted of being an accessary to the offences charged on the prisoner No. 1, and with perjury before the principal sudder ameen in representing herself to be Sabur Beebee alias Oozeer Beebee.

We find, however, that the only act on her part, which connects her with the fraudulent practices of the prisoner Golauboodin, is the deposition alluded to in the charge. That deposition was given on the 23rd of February, 1854, whereas the offences, of which the prisoner No. 1, is found guilty, were completed in October, 1852, and it is quite probable that though Golauboodin may have made use of the female prisoner in February, 1854, to personate Sabur Beebee, when the fraud was on the eve of discovery, he could have done all he did do in the execution of the mookhtearnamah, &c. in 1852, without the connivance or knowledge of the woman. It is not, therefore, in our opinion, to be presumed from the facts before us, that Auderjaun was at that time an accessary, or has since become privy to Golauboodin's guilt.

We are, moreover, of opinion that the charge of perjury is not legally sustainable against her in this case. It appears that after accusations of fraud and of causing the false personation of Sabur Beebee, had been lodged before the principal sudder ameen against Golauboodin, he was directed to produce the pauper plaintiff; he alleged himself to be acting for her as mookhtear, and the prisoner Auderjaun was then brought into court, and without being apprised of the nature of the enquiry then proceeding as to the identity of Sabur Beebee, she was at once *examined on oath* as the plaintiff in the suit, and allowed to commit herself in the statement she made, was then confronted with the witnesses prepared to prove who she really was, and committed on the charge for which she has been tried.

Considering the circumstances under which she was summoned to appear before the court, not as a voluntary witness, but on the accusation that Golauboodin had made use of her to personate another party, we hold that she should have been cautioned as to the effect of her evidence against herself, instead of leading her to convict herself by examining her on oath, and that the evidence thus taken cannot be fairly used to convict her of wilful and deliberate perjury. We, therefore, consider the prisoner is entitled to her acquittal.

The charges against the other prisoners, convicted by the sessions judge and acquitted by the *futwa*, are founded upon depositions made by them regarding Sabur Beebee, being the heiress at law of Ameer Beebee and entitled to succeed to her property, a matter at the time in litigation and regarding which no final decision has been passed. The indictment is wrong in alleging that the prisoners *recognised* Sabur Beebee alias Oozeer

Beebee; they merely asserted their acquaintance with such a person, but the depositions contain no personal identification which would be necessary to substantiate the charges against them.

We therefore acquit these prisoners Nos. 3 to 7.

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June 3.

Case of GOLAUBOODIN & others.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND DATARAM,

versus

DOOLAH (No. 3, APPELLANT,) NAGUR ALI (No. 4,) MUDDUN (No. 5,) PETUN (No. 6,) PEERKHAN ALIAS PETUMBER (No. 7.)

Chittagong.

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July 4.

Case of DOOLAH and others.

Five prisoners convicted of burglary and theft, and sentenced by the sessions judge to different terms of imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, burglary and theft in the house of the prosecutor on the night of 4th January, 1854, A. D. stealing therefrom property valued at Co.'s Rs. 94-4-3; 2nd count, prisoners, Nos. 4, 5, 6, with having in their possession stolen property, knowing it to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Burglary and theft in the house of the prosecutor and stealing therefrom property to the value of Rs. 94-4-3.

Committing Officer.—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 10th March, 1854.

Remarks by the officiating additional sessions judge.—This burglary took place on the night of the 4th January. The prosecutor stated that he was robbed of property to the amount of Rs. 92; he died before his case came on for trial at the sessions; from the evidence it appears that on the night in question, hearing his cries for assistance, some of the neighbours ran to give it, and according to their own accounts, behaved very well; two of the thieves were seized by them, but rescued out of their hands, one witness shewing a very small wound, a cut on the elbow, which he had received in the confusion; the thieves had lit a lamp for the convenience of plunder, and posted two of their number, as sentries, by one of whom, a witness was struck with a *lattee*, however they all decamped on the arrival of the neighbours, leaving behind them two house breaking implements, a cotton *gilaf* and a cap, which were fully identified as belonging to one of the defendants; they managed to take them, the property of the plaintiffs, in a basket on the head of one of the party. The complaint was made to the police on the 6th, the defendants

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were apprehended on the 8th, and sent in to the magistrate on the same day. The defendants all denied the charge before the police, the magistrate and myself; but they were fully identified by the witnesses and their own defence failed entirely, several of their own witnesses speaking unfavorably of them. They were, with the exception of one man, bad characters, and had been previously convicted of other crimes, and this case, though sent up for trial as a burglary, might have been, I think, better described as a dacoity or gang robbery. The *futwa* of the cazee found them guilty by Zenna Ghalib, with this I concur, and considering their previous bad character, &c., have, with the exception of one man, (prisoner No. 4,) sentenced them to seven years each with labor in irons, the excepted man to three years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The evidence of the prosecutor and two witnesses who recognized the prisoner No. 1, and named him before the police on their arrival as well as in the foujdary and sessions courts, satisfactorily establish the charge preferred against him. The other prisoners have not appealed. The prisoner was formerly sentenced to seven years' imprisonment in a case of dacoity. We see no reason to interfere.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

BRINDABUN MUNDUL.

24 Pergunnahs.

1854.

July 4.

Case of BRINDABUN MUNDUL.

Prisoner convicted of dacoity, sentenced by the sessions judge to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Dacoity in the house of the prosecutor Diggumbur Shadhoo Khan and plunder of property to the amount of Rs. 126-4.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. E. A. Samuells, magistrate of the twenty-four pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the twenty-four pergunnahs, on the 13th March, 1854.

Remarks by the officiating additional sessions judge.—A dacoity was committed on the prosecutor's house, on the night of the 2nd January last, and property plundered to the amount of Rs. 126-4. One of the dacoits got over the wall and let in the gang who, entering the apartment occupied by the prosecutor's mother, began to assault and maltreat her. Her screams woke the prosecutor who, on attempting to give the alarm, was knocked

down by one of the dacoits, giving him point with the butt-end of a bamboo and striking him on the eye. The dacoits then rifled a box which was open and stripped the women of the jewels they wore. The prisoner was recognized by the prosecutor together with three of his comrades. He was arrested on that recognition and confessed before the police, and, when taken before the magistrate, repeated his confession with full particulars. He denied the charge before this court, but made no defence, contenting himself by calling a few witnesses to character. These proved that the prisoner up to his apprehension on the present charge was respectably spoken of. There are no aggravating circumstances attending the dacoity, and this is clearly the prisoner's first offence.

1854. July 3. Case of BRINDABUN MUNDUL.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner was recognized by the prosecutor in the act, confessed before the police and again gave every detail of the circumstances of the dacoity and the share he took in it, before the magistrate. We confirm the additional sessions judge's sentence.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

Tirhoot.

1854. July 4. Case of TUHUL and another.

GOVERNMENT AND ANOTHER,

BHEKH (No. 1,) GOORDIAL (No. 2,) DOORGA (No. 3,) TUHUL (No. 4, APPELLANT,) MAHARAJ (No. 5, APPELLANT.)

Two prisoners convicted by the sessions judge of the receipt of stolen property, were acquitted in appeal, the evidence to their production of the stolen property being insufficient.

CRIME CHARGED.—1st count, prisoners Nos. 1, 3, 4 and 5, theft of property valued at rupees 595. Prisoner No. 1, knowingly having in his possession part of the stolen property valued at rupees 9-6; No. 2, rupees 86-14, No. 3, rupees 32-1-6, No. 4, rupees 27-6-3 and No. 5, rupees 18-9; 2nd count privity after the fact.

CRIME ESTABLISHED.—Prisoners Nos. 1 and 3, theft of property valued rupees 595, No. 4, of knowingly having in his possession stolen property valued at rupees 27-6-3, and No. 5, rupees 18-9, both in a case in which property amounting in value to rupees 595 was stolen, and No. 2, privity to theft after the fact.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun, Sarun.

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July 4.

Case of TUHUL and another.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot on the 26th April, 1854.

Remarks by the sessions judge.—The prosecutor is by profession a cloth-merchant residing in mouzah Koraiya, and having on the night of the 25th of January last or 11th Maugh, 1261 Fussily, got up to make water, found that six bundles of cloth and 48 rupees in cash and 12 rupees of copper coins, contained in a small *taut* bag and which used to be on a *machan* or platform in his dwelling-house, had been stolen. Early the next morning he gave information at the thannah, and the darogah having proceeded to the spot was told by one "Gunput Raee" that certain persons of the Aheer or Gwala caste, residing in mouzah Sisswa Sewannah (not far from mouzah Koraiya), had been stealing cloth and, getting tailors to make it up into articles of clothing, had been selling them. Upon this the darogah proceeded to mouzah Sisswah, where he searched the houses of several of the Aheers, but without finding any thing. He however ascertained from the villagers that the prisoner Bhekh, a bad character, (residing in the neighbouring village of Lowtah) had gone during the dark nights to the east for the purpose of thieving. The darogah and prosecutor accordingly proceeded to that mouzah, and on searching Bhekh's house a small *taut* bag was found in it, and one piece of Nynsook cloth and two *turbans* wrapped up in a handkerchief were discovered in an earthen *kotee* or granary; all of which articles found in the presence of witnesses Nos. 11, 12 and 13 were claimed by the prosecutor and identified at the time by him and witnesses Nos. 9 and 10. The prisoner Bhekh on being questioned about them, said that the things found on his premises were not his, and he denied all knowledge of how they came there. He however confessed in the presence of witnesses Nos. 1 and 2, that the prisoners Doorga No. 3, Tuhul No. 4, Maharaj No. 5, one Botoo and himself had together stolen six bundles of cloth from the prosecutor's house, all of which were in mouzahs Loukan and Mutaungah whither he engaged to go and point them out. On arriving at that mouzah Botoo was not found, but the darogah took up his father, the prisoner Goordyal No. 2, and the prisoners Doorga No. 3, Tuhul No. 4 and Maharaj No. 5, who on being asked about the property refused that day to tell any thing about it. The next day, however, finding that there was no use in concealing the business, the prisoners Goordyal No. 2, Doorga No. 3, Tuhul No. 4 and Maharaj No. 5, made voluntary confessions in the presence of the attesting witnesses Nos. 3, 4 and 5 as follows:—

Goordyal No. 2, that he had heard that his son Botoo had stolen some cloth and that if he had brought any home he (prisoner) would give it up.

Doorga No. 3, that he was going along the road when he

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observed Bhekh, Tuhul, Botoo and Maharaj clandestinely dividing the contents of six bundles of cloth among them, some of which they gave him, enjoining him to secrecy.

Tuhul No. 4, and Maharaj No, 5, that they, Botoo, Doorga and Bhekh had together stolen the six bundles of cloth from the prosocutor's house.

The same night the prisoners Tuhul No. 4 and Maharaj No. 5, brought the six bundles of cloth made up into two packages and surrendered them to the police in the presence of witnesses Nos. 14 and 15. The next day all the articles found were identified by the prosecutor and witnesses Nos. 9 and 10; all the prisoners also in the presence of witnesses Nos. 3, 4 and 5 pointed out the several articles of property which in the division had fallen to their share, except the prisoner Bhekh, but the prisoner Goordyal taking up two or three bundles pointed them out as the share which had fallen to his son Botoo and to Bhekh; all the articles of property discovered and given up and identified being found inserted in the prosecutor's inventory delivered at the thannah.

In the foujdary court the prisoners Bhekh and Goordyal, in the presence of the attesting witnesses Nos. 6, 7 and 8, repeated their mofussil confessions, and the prisoner Doorga No. 3, at first doing the same, immediately after retracted his confession, while the prisoners Tuhul No. 4 and Maharaj No. 5, who also confessed in the mofussil, pleaded not guilty before the joint-magistrate.

In this court all five prisoners pleading not guilty, urged in their defence that the darogah extorted their mofussil confessions from them by beating and maltreatment, and all except Bhekh called witnesses only to their previous good character. Even that, however, was not established and of those witnesses, six in number when asked whether they knew or had heard any thing of the darogah's having beaten the prisoners, only one cited by the prisoner Tuhul and of the Aheer or same caste as the prisoners, deposed to having only heard that the darogah had beaten Tuhul; it also appearing from a report of the joint-magistrate's record-keeper, filed with the proceedings, that the prisoner Doorga No. 3, Tuhul No. 4, and Maharaj No. 5, had all three before been in jail for horse-stealing.

The *futwa* of the law officer, convicting the prisoners Bhekh and Doorga of theft of property valued at 595 rupees, the prisoners Tuhul No. 4, and Maharaj No. 5, of knowingly having in possession stolen property and the prisoner Goordyal No. 2, on the 2nd count charged against him in the calendar, viz. privity after the fact, pronounces them all liable to discretionary punishment.

Although the thannah confession of prisoner Bhekh, owing to the absence of one, was only attested by a single witness in

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July 4.

Case of TUHUL and another.

this court, and the prisoner Doorga though in the foujdary he at first confessed, but when instead of having the confession he had made at once attested, he was further questioned by the joint-magistrate (as I think he ought not to have been), instantly retracted, yet both the genuineness of the foujdary confession of Bhekh and the mofussil confession of Doorga and the other prisoners is fully established and their defensive plea, of having been coerced to confess by the darogah's ill-treatment of them, has not been substantiated. In addition too, to identified articles of property having been found in Bhekh's house, it was he who gave the clue which led to the surrender of the prosecutor's property by the other prisoners, and it is in evidence that all pointed out the several articles which in the distribution of property had fallen to their respective shares, three of them being shewn to have previously undergone imprisonment for stealing.

Concurring in the mooftee's conviction of the prisoners, for the crimes of which he has found them severally guilty, I have sentenced them to the different terms of imprisonment proportioned to their degrees of guilt as indicated in the appropriate column.

Sentence passed by the lower court.—Prisoners Nos. 1 and 3, imprisonment each with labor in irons for seven (7) years. Nos. 4 and 5, imprisonment each with labor and irons for four (4) years. Prisoner No. 2, imprisonment without irons for one (1) year, and to pay a fine of Company's Rupees 30, in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) These two prisoners only have appealed, they are convicted of receipt of stolen property. The theft was committed on the 25th of January last, the prisoners were apprehended on the 7th of February, and being made over to the charge of two chowkeedars on their security gave up the property, on the night of the 8th, when it is alleged they came with six bundles of new cloths, to which the prosecutor swore,—whence the property was produced, by and before whom, is not shewn; all that is to be seen on the record is that the two prisoners before day-light came, from nobody knows where, and gave up the bundles. They are said to have confessed before the police and one of them, Tahul, though he denied participation in the act, said he had been seized on the information of Bhekh and others, who were at enmity with him, and had themselves committed the theft. Maharaj denied the charge before the magistrate as did both of the prisoners in the sessions court. We cannot convict upon the evidence of so unsatisfactory a nature; the prisoners are acquitted, and must be immediately released.

PRESENT:

SIR ROBERT BARLOW, BART., AND
H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

SYED MAHOMED NUKHEE, CALLING HIMSELF ALLY NUKHEE.

Shahabad.

1854.

July 4.

Case of MAHOMED NUKHEE calling himself ALLY NUKHEE.

Prisoner convicted of affray attended with wounding on both sides, sentenced to seven years' imprisonment by the sessions judge. Appeal rejected.

CRIME CHARGED.—1st count, affray attended with wounding of Ramput Singh and Surrub Roy on one side, Ramphul Roy and Ramgolam Roy on the other side; 2nd count, burning house with animosity.

CRIME ESTABLISHED.—1st count, affray attended with wounding of Ramput Singh and Surrub Roy on one side, Ramphul Roy and Ramgolam Gwallah on the other side; 2nd count, burning house with animosity.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 7th February, 1854.

Remarks by the sessions judge.—The facts of this case were detailed in the monthly statement No. 6, for November, 1852.

" This is a case of affray in which two men on either side received sword wounds, and a house was burnt in the melee.

" The immediate circumstances which led to the fight cannot be confidently stated. The witnesses on both sides giving as usual discordant accounts of the transaction.

" The subject of the dispute is clearly the possession of mouzah Majee.

" Of this mouzah Saliq Ram Singh is the theekadar, holding a lease of the same from 1255 (A. D. 1848) from Mahomed Hossain.

" This year other parties claiming share in the estate have given a new lease ostensibly to one Manick Roy, but in fact to Ramjeeawan Roy, the son of Ramnath Singh, the dewan of the Dumraou Rajah, a man of great wealth and influence in the district.

" The belligerent parties are respectively the servants of the theekadar Saliq Ram Singh and the partners of Mahomed Nukhee, who has granted the present lease.

" The witnesses on the side of Saliq Ram Singh say, that his servants, prisoners Nos. 5 to 13, went peaceably to collect the rents of the village, when the other prisoners, residents of the village and in the interest of Mahomed Nukhee made an assault upon them, under the guidance of their principal, with swords

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Case of MAHOMED NUKHEE calling himself ALLY NUKHEE.

and staves wounding two of their number and setting fire to Saliq Ram Singh's cutchery.

"The witnesses on the other side accuse Saliq Ram Singh's party of coming down upon the village armed and in force, and burning the house of Asman Roy the moqudum of the village.

"The court is left to choose between the two stories, and I confess I am at a loss which to believe, both probably are false, but that the battle took place is sufficiently evident.

"The burkundaz and chowkeedars who were sent to prevent the affray, instead of throwing light upon the question, have increased the perplexity by siding with the party of Mahomed Nukhee (through the influence doubtless of dewan Ramnath Singh,) and so far from keeping the parties separate, actually employed the men of one side to *apprehend* the others, thus setting them by the ears.

"The whole of their evidence is so clearly false, that I reject it altogether.

"The magistrate I observe has suspended the burkundaz, and he will I think do well to subject him and his satellites to condign punishment for gross neglect of duty.

"The wounds on both sides are sword cuts pronounced by the civil assistant surgeon to be severe, though not dangerous.

"Dr. Wittal having left the station, copy of his evidence taken before the magistrate has been filed with the case.

The defence of the prisoner rests chiefly upon the statements given by their witnesses who were examined for the prosecution, corroborated in some instances by other prisoners. Nos. 8, 9, 10, 11, 12 and 13 pleaded an *alibi*, but the evidence adduced was totally insufficient to establish the plea.

"I am unable fully to satisfy my own mind as to the several degrees of culpability of the individuals engaged, but there are several circumstances which deserve consideration.

"First, Saliq Ram Singh is clearly shewn to be in possession as theekadar under a lease, which commenced some five years ago, and has still four years to run.

"Secondly, the first intimation given at the thannah was given by Saliq Ram Singh's servant, the day before the affray.

"Thirdly, the house that was burnt, was I think, evidently the cutchery and not the private residence of any individual ryot.

"On this point, the *direct* evidence is as on all other particulars, discordant, but the darogah distinctly corroborates the fact that the building was that used as Saliq Ram's cutchery, and this certainly appears most probable, that Saliq Ram is in possession, and that Mahomed Nukhee's object and avowed purpose is to disturb that possession, by disputing the right of the party to whom it was denied, is abundantly evident from good documentary evidence and it is intelligible, in reference to this purpose and intent that his party should perpetrate this violence.

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Case of MAHOMED NUKHEE calling himself ALLY NUKHEE.

"At the same time it appears to me that Saliq Ram's party assembled in some force, and though perhaps *not* with the intention of committing violence, yet certainly prepared to resist and repel any assault by violence."

The prisoner before the Court is the leader of the party opposed to Saliq Ram Singh.

He has evaded justice up to the present time and as usual employed the interval in concocting an elaborate *alibi*.

Eleven witnesses support the plea, but the evidence is utterly unworthy of credit.

The peshkar of the Behar civil court, who was summoned by the prisoner, and who is the most respectable of the witnesses, denied all knowledge of him.

No number of witnesses, deposing to a fact of this description after opportunity of concert, and where the effect of their evidence turns upon a date, are in this country deserving of the slightest consideration, if opposed to direct evidence and probability.

The *futwa* convicts the prisoner and declares him liable to *seeasut*.

Regarding him as the principal offender, I have sentenced him to a more severe punishment than the rest.

Sentence passed by the lower court.—To be imprisoned with labor in irons for (7) seven years from the 7th Feb. 1854.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner absconded on the apprehension of several others who were convicted in 1852. The witnesses named him on the former trial, and have recognized him since his having been brought before the authorities. The sessions judge has, in his report, given very full particulars of the case, and in concurrence with the law officer, convicts the prisoner of affray and wounding. He is considered by the sessions judge as the principal and the instigator of the disturbance. He has cited several witnesses in his defence, who depose to his absence at the time of the occurrence, but they are not credited by the judge or the moulvy. The peshkar of the Behar civil court, the most respectable of the witnesses for the defence, denied all knowledge of him. We confirm the sessions judge's sentence, as nothing urged in the petition of appeal affects the verdict and judgment passed.

PRESENT:

H. T. RAIKES AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

RUGHOONATH NAIK.

Cuttack.

1854.

July 7.

Case of RUGHOONATH NAIK.

The commitment by the joint-magistrate of a witness for perjury, in a deposition given before the law officer to whom the case had been referred for opinion, held to be legal.

The perjury held to be material to the issue of the case, because it was altered to add to the deponent's credibility as a witness.

CRIME CHARGED.—Perjury, in having on the 10th of January, 1854, corresponding with 29th Poos, 1261 U., deposed under a solemn declaration taken instead of an oath, before the law officer of Cuttack, that "on the 15th of Poos, B. S. Gouree Churn Roy, through the instrumentality of Sham Settee Dhobee and Bunnye Behra Bowree, cut and carried away my employer's '*jerree*' tree, and on my interfering, they attempted to commit an affray," such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Mr. W. J. Longmore, joint-magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 20th June, 1854.

Remarks by the sessions judge.—The defendant lodged a complaint against Gouree Churn Roy of forcibly cutting and carrying away a "*jerree*" tree, the property of his master, Judoo Monee Paikra, on the 15th Poos, 1261, U., and deposed under a solemn declaration administered in lieu of an oath under Act, 5 of 1840, in the court of the law officer on the 10th January 1854, corresponding with the 29th Poos, 1261, U., that the aforenamed Gouree Churn Roy cut the tree in question at five or six *ghurrees* or about 10 A. M. on the said 15th Poos, and that he, the defendant, interposed to prevent him, but he paid no attention and cut and took away the tree. Whereas, he, the defendant, on the said 15th Poos, 1261, or 27th December, 1853, was in attendance at the court of the collector of Pooree, and was there examined as witness in a summary suit instituted by one Suchidanund Purrirah against his, the defendant's master, Judoo Monee Paikra, and did not return to Amnakood, where or near to which the tree was cut, till after day-break on the morning of the 16th Poos.

Before the joint-magistrate the defendant admitted the above facts and pleaded that he remonstrated with Gouree Churn Roy, about cutting the tree on the morning after he returned to Amnakood from Pooree, and that if he had been interrogated as to whether he opposed the cutting of the tree on the 15th Poos, he would have given a specific answer.

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Case of RUGHOONATH NAIK.

Before this court he pleaded *not guilty* to the charge, and adhered to his defence set up in the court of the joint-magistrate.

His depositions recorded in the courts of the law officer and the collector, as well as his answers taken before the joint-magistrate, have all been verified and proved by the persons who wrote them.

The law officer declares the charge of perjury not proved, because in his opinion the false deposition made by the prisoner was not material to the issue of the case, and no injury was caused to any one thereby.

But from this verdict I altogether dissent.

Two issues arise out of this case. 1st, whether the joint-magistrate was competent to commit the defendant, with reference to the provisions of Clause 4, Section 14, Regulation XVII. of 1817, the perjury having been committed in the court of the law officer in his capacity of assistant to the magistrate? 2nd, whether the perjury or false deposition was material to the issue of the case?

With regard to the first issue, there may exist some difference of opinion, and I have therefore proposed it in order that the defendant may have the benefit of it. But I myself am fully of opinion, that, as the law officer did not pass final orders in the case brought by the defendant against Gouree Churn Roy, but submitted it to the magistrate (who again referred it to the joint-magistrate) in order that he might first try the question as to who was in possession of the disputed tree under Act IV. of 1840, and afterwards pass orders on the charge of forcibly cutting and carrying it away,—the joint-magistrate was competent to consider and judge the entire evidence as if it had been taken originally before himself, and after detecting the perjury to commit the defendant. Had the law officer acquitted the accused on the original charge, or passed any final order thereon, the case would in my judgment have been quite different, and the joint-magistrate would have had no jurisdiction in the matter.

As relates to the second issue, I would also answer it in the affirmative. It is quite evident that the defendant knowingly and designedly deposed falsely under solemn declaration, that he was present at the cutting of the tree and remonstrated against the act of the defendant, Gouree Churn Roy, with the view to give force and credibility to his complaint, and consequently that his deposition was material to the issue of the case; and it was just as easy for him to have told the truth and stated that the tree was cut during his absence, and that on his return to Amnakood, he remonstrated with Gouree Churn Roy, if he really did so.

Therefore, although the matter regarding which he gave false evidence, is not a very grave one, I do not think he should be

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allowed to go unpunished, and I recommend that he be sentenced to six month's imprisonment with labor without irons.

The Defendant is on bail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) We consider the prisoner has been properly convicted of perjury, under the circumstances stated by the sessions judge in his letter of reference. The joint-magistrate was clearly competent to deal with the offence, as the charge, brought by the prisoner, of cutting down and carrying off the tree, was under consideration in his court.

We also concur with the sessions judge, regarding the false statement made by the prisoner being material to the issue, inasmuch as the prisoner by stating that he was himself present, when the tree was cut, intended thereby to add credit to his statement. We sentence the prisoner, as recommended by the sessions judge, to six months' imprisonment with labor without irons.

PRESENT:

A. DICK, AND J. DUNBAR, ESQS., *Judges.*

GOVERNMENT,

versus

GOOROO ALIAS GOOROO CHURN CHRISTIAN.

Twenty-four Pergunnahs.

1854.

July 7.

Case of GOOROO alias GOOROO CHURN CHRISTIAN.

The law officer of this court, rejecting the mofussil confession, because denied before the magistrate and in the sessions court, convicts the prisoner of the murder on violent presumption.

CRIME CHARGED.—Wilful murder of his wife Birmo.

Committing Officer.—Mr. H. D. H. Fergusson, officiating magistrate of twenty-four pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of twenty-four pergunnahs, on the 13th June, 1854.

Remarks by the officiating additional sessions judge.—The history of the case is as follows:—On the night of the 18th March last, the prisoner and the deceased, who was his wife, slept together at the house of her brother. On the following morning both were missing, and the body of the deceased was found in a tank partially covered with weeds with a frightful gash across the throat, which nearly severed the head from the body. Near the spot were discovered a pool of blood, a blood-stained razor and a woman's hair-tie. These facts will be proved by the witnesses named and enumerated in the margin.*

* Purnee Chowkeedar, witness No. 9. Srimunt Christian, witness No. 10. Kalachand Christian, witness No. 11, and Gohur Ally Burkundaz, witness No. 19.

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July 7.

Case of GOOROO alias GOOROO CHURN CHRISTIAN.

Prisoner convicted of the murder of his wife, on his mofussil confession, corroborated in its details by the inquest and by other evidence, and sentenced to be hanged.

On the morning of the 20th idem, the prisoner was observed to go into a wood with marks of blood on his clothes. He was watched and followed, and when arrested his throat was found partially cut and his legs besmeared with dry mud. He was taken to the darogah, who was prosecuting his enquiries at the scene of action, and freely and unreservedly admitted that he had murdered his wife. The persons marginally noticed,* will be found to speak to these facts.

* Kuruna Bewa, witness No. 13.
Bhirub Mundul, witness No 14.
Gopinath Chowkeedar, witness No. 15.

On the prisoner's arrival at the sudder station, he was sent to the hospital for medical treatment He there made an admission of guilt in the hearing of the person indicated in the margin,† who was deputed by the magistrate to precede him to the hospital for the purpose of recording the prisoner's expected confession, which however he withheld on seeing Mr. Fergusson with his array of armed policemen.

† Bamachurn Rudra, witness No. 18.

The reason assigned for the murder, is the frequent and lengthened absences from home on the part of the deceased, and the reputation that she was a woman of bad character, and unfaithful to her husband. The parties, named in the margin,‡ have recorded their sentiments on these points.

‡ Diaram Mokhel, witness No. 19.
Subul Ghose, witness No. 20.
Shebee Beer, witness No. 21.
Shistidhur Beer, witness No. 22.

The evidence of the civil surgeon leaves no doubt as to the cause of death. He states in his examination that he found the neck of the deceased nearly divided, and all the large blood-vessels cut through and destroyed. He has also recorded it as his opinion, that the wound on the throat of the prisoner was self-inflicted.

The witnesses named in the margin,§ prove the prisoner's confession before the police, and the inquest held on the body of the deceased by the darogah. The confession is a clear and unreserved admission of crime.

§ Ramjye Beer, witness No. 2.
Ramje Komer Tiwer, witness No. 3.
Shibchunder Christian, witness No. 6.
Ramnarain Rai, witness No. 7.

The prisoner denied the charge before the magistrate and accused Gurudass Bag and Bunnomali Komer with having murdered his wife and wounded him. The persons marginally noticed,|| prove the innocence of those parties.

|| Gunga Makhal, witness No. 23.
Ataram Bag, witness No. 24.
Kishto Bag, witness No. 25.
Mohesh Christian, witness No. 26.

Before this court, the prisoner pleads *not guilty* and charges one Ramdhun Kunwur with murdering his wife, in consequence

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Case of Gooroo alias Gooroo Churn Christian.

of her discarding him after a long course of criminal intercourse, and attempting to kill him by cutting his throat. He calls no witnesses to his defence.

The *futwa* of the law officer convicts the prisoner, Gooroo alias Gooroo Churn Christian, of the wilful murder of his wife, Birmo Christian, on violent presumption, and declares him liable to *kissas*.

The prisoner and the deceased slept together on the night of the murder, they were both missing the following morning, he absconded and her body was found in a mangled state in a tank not far distant from their residence; the prisoner was arrested two days afterwards in a place of concealment, which ought not to have been his resort, if his plea that others had committed the murder and wounded him, were true; he freely and voluntarily confessed before the police that he murdered his wife and cut his own throat, and the truth of his confession is borne out by the pool of gore, the blood-stained razor and hair-tie found near the spot where the body was discovered; he subsequently made a verbal admission of crime before one of the magistrate's ministerial officers, and has set up three distinct and separate pleas before the three tribunals at which he has been arraigned,—the police, the magistrate and the sessions court. All these circumstances are to my mind conclusive of the prisoner's guilt, and I concur in the finding: convicting the prisoner, Gooroo alias Gooroo Churn Christian, therefore of a cruel and deliberate murder and seeing nothing in his case to render him an object of mercy, recommend that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) It is in evidence that the prisoner went to rest with the deceased, his wife, the night before the murder; that both were missing the next morning; that during the day the corpse of the wife was found in some water in a plain, about a mile and a half from the house where they had gone to rest the night before, with the throat and face frightfully gashed, and a pool of blood near by, also a razor and a hair-tie of a woman; that the prisoner was missing for two days, when he was apprehended with his own throat partially cut, and marks of blood on his person and on his clothes; that he immediately confessed to having murdered his wife, and entered into details which are corroborated by the facts of the finding of the corpse of his wife with the throat cut, the pool of gore near by, the razor, and the woman's hair-tie. This confession, the prisoner admitted before the magistrate, that he had given, but repudiated as given under fear from the threatening manner of the darogah of police. The story, however, which he substituted for it, to account for the murder, was on inquiry proved to be false. In the sessions court, he resorted to another tale, in proof of which he declined to call any witnesses. Several witnesses have testified to the

deceased being of a loose character, though only in general terms. Whatever may have been the motives, the confession of the prisoner, corroborated, as above observed by the inquest, and also by the witness, No. 18, and repudiated by manifestly false allegation, strongly proves the guilt of the prisoner. The Court therefore convict the prisoner of the murder of his wife, and seeing no mitigating circumstance in the case to render prisoner an object of mercy, sentence him to be hanged.

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Case of GOOROO alias GOOROO CHURN CHRISTIAN.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND GOBIND CHUNDER ROY,

versus

OOZEER MAHOMED (No. 1,) RAMDHUN CHUNG (No. 2,) KORESH MAHOMED KHAN (No. 3,) HURRISH CHUNDER SHAH (No. 4,) SREENAUTH BYRAGEE (No. 5.)

Dacca.

1854.

July 7.

Case of OOZEER MAHOMED and others.

Prisoners convicted of the receipt of stolen property knowing it to be such, sentenced to four years' imprisonment in appeal.

CRIME CHARGED.—Nos. 1 to 3; 1st count, burglariously entering the house of Rumanee Burmanee, the sister of Gobind Chunder Roy, prosecutor, and stealing therefrom property, valued at Rs. 605-1; 2nd count, being accomplices in the same; 3rd count, being accessaries both before and after the fact; 4th count, receiving and possessing portions of the stolen property, knowing them to have been so obtained. Nos. 4 and 5; 1st count, being accessaries after the fact; 2nd count, privity; 3rd count, receiving and possessing portions of the stolen property, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Nos. 1 to 3, accessaries to the robbery after the fact and being in possession of stolen property, knowing it to have been so obtained. Nos. 4 and 5, being in possession of stolen property, knowing it to have been so obtained.

Committing Officer.—Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising full powers of a magistrate.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 21st April, 1854.

Remarks by the sessions judge.—The house of Mussumut Rumanee Burmanee was entered at night by burglary, and property to the value of Rs. 605-1, stolen therefrom. The prisoners were apprehended with portions of the stolen property in their possession, and all confessed at the thannah. They again confessed before the principal sudder ameen, except Ramdhun Chung, prisoner No. 2, who said he had "found" the property in his possession. Excepting their admissions, there is no direct evidence

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July 7.

Case of OOZEER MAHOMED and others.

of theft against the prisoners; Oozeer Mahomed and Koresh Mahomed Khan, prisoners Nos. 1 and 3, admitted in this court, waiting in the boat while the burglary was being committed, and receiving a part of the property afterwards found in their possession; Ramdhun Chung admitted at the thannah active participation in the theft, but before the principal sudder ameen, denied this; Hurrish Chunder Shah, prisoner No. 4, admitted having had the property in his possession. He said he had procured it of Rajmohun, who told him it was badly obtained and should be sold at a distance. He considered Rajmohun respectable, having known him six or seven years, but Rajmohun, it appears by the record, was condemned to three years' imprisonment for theft, on the 28th May, 1849. The prisoner No. 5, had possession of some property, and admitted before the principal sudder ameen that Hurrish Chunder, No. 4, had told him it had been stolen.

The property was recognized as belonging to Mussumut Rumanee Burmanee, widow of Petamber Rae.

In this court, the prisoners denied their guilt, and produced witnesses, but nothing was established in their favor.

The robbery seems to have been planned, and allowing that prisoners Nos. 1 to 3, went, as they said they did, in company with Rajmohun and others; from his character and the manner in which he went from place to place, they must have known that the robbery was in contemplation.

The law officer did not convict the prisoners on the same counts as the judge, but the difference of opinion was too slight to render a reference necessary.

Sentence passed by the lower court.—Nos. 1 to 3, each to be imprisoned for the period of seven years with labor and irons, Nos. 4 and 5, each to be imprisoned for the period of five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) Possession of the property, recognised as belonging to the prosecutor, is proved against all the prisoners. Their witnesses fail to establish any thing in their favor, we therefore convict them of receipt of stolen property, knowing it to be such, and sentence them each to (4) four years' imprisonment with irons and labor.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

RAM COOMAR BHOOEMALLY AND GOVERNMENT,

versus

RAM CHURN MUNDLE (No. 12,) SHEIKH KADER (No. 13,) MAGUN MUNDLE (No. 14,) AND GOOPEE-NAUTH ROY (No. 15.)

Dacca.

1854.

July 7.

Case of RAM CHURN MUNDLE.

The conviction, by the sessions judge of the prisoner for aggravated culpable homicide, was affirmed.

CRIME CHARGED.—1st count, No. 12, wilful murder of Bhugeerut Bhooemally, father of Ram Coomar Bhooemally, plaintiff; 2nd count, Nos. 12, 13 and 14, affray wherein Bhugeerut Bhooemally aforesaid was wounded and died of the wound; 3rd count, illegally opposing the police in the execution of their duty, and No. 15, being present aiding and abetting in the above crimes.

Committing Officer.—Moulvee Syud Zainooddeen Hussain, deputy magistrate of Manickgunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 16th June, 1854.

Remarks by the sessions judge.—The principal witness, Kamal Mujlish (No. 1,) a *tehseeldar*, stated that having heard of some *lattials* collected by a neighbouring zemindar, he (the tehseeldar) made an application to the darogah, for the assistance of the police. This being refused, he proceeded to complain to the magistrate, when meeting the thannah jemadar, he went with him to Agla, a village within the limits of his employer's estate. On the same day an alarm having been given of the ryot's land being ploughed by the other party, the police and some ryots went to the spot, where the *lattials* were assembled, when one of these, the prisoner No. 15, called out "*mar,*" and the ryots and police seem to have retreated. In doing so, the deceased, Bhugeerut, fell and was wounded with a *soolfee* or spear, by the prisoner Ram Churn, No. 12, of which wound he (Bhugeerut) died the following day.

The facts as regarded the disturbance, and the wound received by the deceased, were fully proved by the witnesses* Nos. 2 to 6 and 27, and corroborated by Nos. 7 and 8,† before whom the wounded man's deposition had been taken by the police.

* No. 2, Aulabukhsh Khan,
3, Khodabux Khan,
4, Sheikh Ruhomut,
5, Sacheeram Mundle,
6, Sheikh Joolmut Chowkeedar,
27, Allimooddeen Burkundaz.

† 7, Kolly Sunker Doss,
8, Gurreeb Hossein Khan.

The civil surgeon ascribed the death of the deceased to inflammation arising from the wound inflicted on him.

All the prisoners were recognized as having been present

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July 7.

Case of RAM CHURN MUNDLE.

(with others not apprehended) at the time the disturbance took place; they all pleaded *not guilty*, and attempted to prove *alibis*, but the witnesses for the prisoners Nos. 12 and 13 denied all knowledge as to where these persons were on the day of the occurrence; those for No. 14, said he was in his own house at noon, but this is quite compatible with his having been present at the disturbance at 8 or 9 o'clock. The witnesses for the prisoner No. 15, said he had been at his own village, a day's journey distant, but this, from his own two fellow-villagers, ought not to weigh, in my opinion, against the direct evidence for the prosecution.

The law officer convicted the prisoner Ram Churn, No. 12, on the 2nd count charged, Nos. 13 and 14, on the 2nd count, and No. 15, of aiding and abetting; I so far dissent from the *futwa*, that I consider it to have been fully proved by eye-witnesses, that the deceased died of a wound inflicted by Ram Churn (No. 12,) and that the prisoners were throughout the aggressors in the disturbance. I would convict Ram Churn No. 12, of aggravated culpable homicide, and sentence him to fourteen years' imprisonment with labor and in irons. The other prisoners have been sentenced.

The Bengalee calendar charges the prisoners with *danga hangama;* under the circular order No. 37, of 6th January, 1840, the latter word should have been rendered "riot." The word affray is inapplicable to the disturbance, which all the evidence shows to have been an attack by one party only.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) Having gone over the proceedings as regards Ram Churn Mundle the referred prisoner, we see no reason to dissent from the opinion of the sessions judge, and convict him of aggravated culpable homicide, and, as proposed by the judge, sentence him to fourteen years' imprisonment with labor in irons.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

JOYRAJ AHIR.

Sarun.

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July 7.

Case of JOYRAJ AHIR.

The prisoner acknowledged giving evidence, while personating another. His appeal was rejected.

CRIME CHARGED.—Perjury in having on the 4th February, 1854, corresponding with 21st Maugh, 1261, F. S. deposed under a solemn declaration taken instead of an oath, before the magistrate of Sarun, and under the name of Phoolchand; that after listening to the deposition of Phoolchand (the real witness) recorded in the case of Rasmoo Rai versus Sheer Bux, dated 4th September, 1849, it was his evidence, and that the defendant She Bux, now in court, is not the same person mentioned by him in his former evidence. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, sessions judge of Sarun, on the 6th April, 1854.

Remarks by the sessions judge.—The prisoner admits having deliberately perjured himself, but states in defence that he did so at the instigation of the jemadar of Purah. He says, however, that he has no proof to give of this assertion, and there is nothing in record to support this defence, though it does not appear that the defendant was in any way connected with She Bux or that he had any object in personating Phoolchand. The Moulvy convicts the defendant of perjury on his own admission and the facts of the case, and declares him liable to discretionary punishment. As the crime is clearly established I sentence him to three years' imprisonment from this date with labor. To show the value set on a solemn affirmation by the defendant, I may add, that on passing sentence I explained to him that his defence, even if proved, would not justify the act, and I asked him if he would swear a murder against any one I might point out, and in reply was told that he would of course swear any thing he was directed.

Sentence passed by the lower court.—To be imprisoned with labor for a period of three (3) years, without irons, from the 6th April, 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The prisoner in his appeal repeats the allegation, that he was sent in by the thanadar to personate the witness Phoolchand. We see no reason to interfere with the conviction and reject this appeal.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND JUGROOP SINGH,

versus

MOHABUL SINGH (No. 5,) AND KEWUL SINGH (No. 6.)

Sarun.

1854.

July 7.

Case of MOHABUL and another.

Appeal rejected; the evidence for the prosecution being considered to be corroborated by the acknowledgement of one of the prisoners.

CRIME CHARGED.—Assault with severe wounding of Jugroop Singh.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 20th April, 1854.

Remarks by the officiating sessions judge.—The defendants are charged with assault with severe wounding, and it would have been better if maiming had also been added to the charge, while the weapons with which the defendants were armed, a *ghurassa* and *fursah*, are of such a kind as to warrant the belief that they may have intended to take life. The plaintiff and defendants are relations, but putteedaree disputes have caused ill-will between them. It is probable that the immediate cause of the present case was the intention of the plaintiff to report the return to their village, Burlumpoora, of a brother of defendant, No. 6, who had evaded apprehension by the police. The plaintiff, Jugroop, had been talking with his brother, Naurung, on the subject, and it is supposed that their intention became known to the defendants, but this much is clearly established that they met each other in their village on the 3rd January last at the house of Lochun, witness No. 2, when a dispute took place between Mahabul, defendant No. 5, and Naurung, blows were exchanged, but they were separated, and the parties left the place. Shortly afterwards, as Jugroop was sitting at the door of Addeen Singh, close to Lochun's, the defendants came up armed, Kewul Singh with a *ghurassa* and Mohabul with a *fursah*, and attacked him,—Naurung arriving at the same time armed with a *lattee*. The attack is clearly proved to have been commenced by the defendants, one of whom, No. 6, Kewul Singh, aimed a blow at Jugroop, which cut his left hand clean off at the wrist, amputation higher up being subsequently necessary, while the other inflicted a severe wound on the left shoulder. Naurung then struck Mohabul Singh a blow with his *lattee*, which broke his arm. Jugroop was unarmed and the magistrate was right, I think, in holding that the case was not one of affray. Mohabul, defendant No. 6, says his arm was broken by Naurung and denies the charge, but has no proof to

offer. Kewul Singh pleads an *alibi*, supported by two witnesses, but these are unavailing against the positive testimony of five eye-witnesses, Nos. 1, 2, 3, 4 and 5, who were close at hand, when the assault was committed, coupled with the fact of his having been named from the first as one of the aggressors. The Moulvee convicts both of the crime charged and holds Kewul Singh, defendant No. 6, liable to *kissas*, and Mohabul Singh to *hukoomut udl*. The charge is fully proved, and I see little difference in the guilt of the prisoners, for had the blow given by Mohabul struck the plaintiff on another place, death even might have ensued. Mohabul, however, has been to some extent punished already with a broken arm, and I accordingly sentence him to six years' and Kewul Singh, defendant No. 6, to seven years' imprisonment with labor in irons from this date.

1854. July 7. Case of MOHABUL and another.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) Having gone through the case, we see no ground for interference with the judge's conviction and sentence. Mohabul acknowledges his presence on the occasion, and this circumstance is corroborative of the evidence of the witnesses against Kewul; whom we therefore believe in preference to those for the *alibi* called by Kewul. The prisoners' appeal is rejected.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

Twenty-four pergunnahs.

GOVERNMENT,

versus

TARACHAND MANNAH (No. 1,) BHUJOHURRY BUJOY (No. 2,) PITTUMBER MANJEE (No. 3,) RUGHOONAUTH SHAWONTH (No. 4,) RUTTON SHAWONTH (No. 5,) MOHESH DOME (No. 6,) ISSEN SIRCAR (No 7.)

1854. July 8. Case of TARACHAND MANNAH. and others.

The prisoners were convicted of dacoity, and sentenced by the sessions judge to seven years' imprisonment. In appeal one prisoner was acquitted.

CRIME CHARGED.—1st count, Nos. 1 to 7, dacoity in the house of prosecutor, Susteeram Ghose, and plunder of property to the amount of Rs. 841, and No. 3, also with receiving a portion of the above property knowing it to have been plundered.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. M. Louis, assistant, exercising the powers of joint-magistrate of the twenty-four pergunnahs.

Tried before Mr. J. S. Torrens, sessions judge of twenty-four pergunnahs, on the 26th April, 1854.

1854. July 8. Case of TARACHAND MANNAH. and others.

Remarks by the sessions judge.—The prisoners plead *not guilty;* Nos. 2, 3, 4, 5 and 7, confessed before the joint-magistrate and darogah, and name the remaining prisoners clearly as having been engaged in the dacoity, and though this would not of course in itself form sufficient ground for conviction, I consider the circumstantial evidence as to the prisoners, Nos. 2 and 6, having gone and deposited money, proceeds of the sale of the property, the day after the dacoity with the witness No. 31, and the recognition from his voice of Tarachand Mannah No. 1, by the witness No. 1, corroborated as these facts are by the confessions, fully sufficient evidence to convict the prisoners not confessing of the charge, and sentence them all to seven years each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) We convict the prisoners, Nos. 4 and 7, on their confessions before the darogah and magistrate, but against the prisoner, Tarachand, No. 1, there is nothing but the evidence of Ram Ghose, who recognized his voice on the night of the dacoity. Such recognition, however, was not mentioned by his father, the prosecutor, when he gave his deposition on the day after the robbery. Setting aside that evidence, there is only the confessions of the other prisoners, implicating him as one of their associates. Considering the proof against the prisoner, No. 1, to be insufficient for his conviction, we acquit him of the charge.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

Dacca.

1854. July 8. Case of ARZAN MEAH and others.

GOVERNMENT AND MUSSUMUT KOKEELA,

versus

ARZAN MEAH (No. 1,) OOSEMOODDEEN MEAH (No. 2,) FAZIL MEAH (No. 3,) AUSAROODDEEN MEAH (No. 5,) AND AFTABOODDEEN ALIAS ATOO MEAH (No. 4.)

Two prisoners convicted as principals and three as accomplices in culpable homicide, sentenced by the sessions judge to vari-

CRIME CHARGED.—Nos. 1 and 2, culpable homicide of Arzanoollah Fuqueer the husband of Kokeela prosecutrix, in having beaten and wounded him with a *lattee* on the night of 11th February, 1854, from the effects of which he died the next day. Nos. 3, 5 and 4, being accomplices in the above crime.

CRIME ESTABLISHED.—Nos. 1 and 2, culpable homicide of Arzan-oollah Faqueer. Nos. 3, 5 and 4, being accomplices in culpable homicide of Arzan-oollah Fuqueer.

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Case of **Arzan Meah** and others.

...ous terms of imprisonment. Appeal rejected.

Committing Officer.—Mr. W. H. Brodhurst, joint-magistrate of Fureedpore.

Tried before Mr. S. Bowring, sessions judge of Dacca on the 27th April, 1854.

Remarks by the sessions judge.—From the evidence of Lall Mahomed (witness No. 1,) it appeared, that his sister living in the same house, had been taken away by the prisoner No. 5, on the 30th Maugh. On the following day the witness brought her back to his own home; about 10 o'clock on the night of the first Falgoon, an alarm was given when the witness going out, found the prisoners Nos. 1 to 5, and others, fifteen in all, surrounding the premises; the deceased Arzan-oollah also came out of his house close by, and on interfering was struck two blows on the head by the prisoners Nos. 1 and 2, of which injury he died the following day. The witness No. 2, and his sister No. 7, were then taken away by the rioters, who on the road met Bholaye witness No. 14, whom they, on his remonstrating with them, tied to witness No. 2, and carried all three persons to the house of the prisoner Arzan Meah (No. 1,) whence they were on the following day released by the police. This evidence was corroborated by several witnesses,* who assembled on the alarm being given, or who saw the rioters. The sub-assistant surgeon deposed to the cause of death, an injury to the skull, caused by a blow from a club.

* Nos. 1, 2, 3, 4, 5, 6 and 7.

The prisoners denied they were guilty; Nos. 1, 2, 3 and 5, produced witnesses to show that the witnesses for the prosecution had attacked them, in consequence of the marriage of Ausarooddeen (prisoner No. 5,) to Lall Mahomed's (witness No. 1,) sister, but the marriage was said to have been celebrated by the witness No. 42, who admitted he had no *sunnud,* could not read and did not know what were the prohibited degrees of relationship; nearly every witness for the prisoners lived at a distance from the village where the homicide occurred and many were related to the prisoners, who had made no complaint of the alleged assault to the police.

Prisoner No. 4, Aftabooddeen pleaded an *alibi,* but could produce only his own relatives to prove it.

The offence, of which the prisoners have been convicted, is one of very common occurrence in this district and Dacca. There were last year in Furreedpore 465 riotous assemblages, such as this appears to have been, reported by the police, and scarcely one in fifty of the offenders would appear to have been punished.

In this case homicide has been the consequence, and owing to the frequency of these riotous assemblies, I intend, until the Sudder Court may determine otherwise, to punish severely all offences arising from such meetings, in the hope that a few examples may tend to diminish the amount of crime.

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Case of ARZAN MEAH and others.

The prisoner Aftabooddeen (No. 4,) does not appear to have taken so active a part as the others.

The joint-magistrate should have put in the evidence of the officers of police, who released the witnesses from confinement in the house of the prisoner No. 1.

Sentence passed by the lower court.—Nos. 1 and 2, each to be imprisoned for the period of seven years with labor and irons. Nos. 3 and 5, each to be imprisoned without irons for the period of four years from this date, and to pay a fine of one hundred rupees on or before the 20th day of May, 1854, or in default of payment to labor until the fine be paid or the term of sentence expire. No. 4, to be imprisoned without irons for the period of two years from this date and to pay a fine of fifty rupees on or before the 20th day of May, 1854, or in default of payment to labor until the fine be paid or the term of the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. H. T. Raikes.) When this case was enquired into by the police, the prisoners did not state that the deceased Arzan Fuqueer was killed by the plaintiff's party, but said they did not know how he came by his death, nor when the case was investigated by the magistrate did they bring forward any such plea; it was not till the case was committed to the sessions, and they were called upon for their defence, that they put in a petition saying they *then* heard that the deceased was killed by a blow from some one on the prosecutor's side who had struck at the prisoner Arzan Meah No. 1; numerous witnesses have been cited to establish the fact, but nothing has been elicited by the evidence for the defence, which at all invalidates that given for the prosecution at the earliest stage of the investigation; we see no reason to interfere.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

MANOOLALL AND GOVERNMENT,

versus

HIMUT ALI (No. 1,) KHAN MAHOMED (No. 2,) AND KHAIRATEE (No. 3.)

Sarun.

1854.

July 10.

Case of HIMUT ALI and others.

Two prisoners were convicted of theft and a third prisoner of knowingly possessing stolen property, and sentenced by the sessions judge to various terms of imprisonment.

In appeal the conviction of the two former was upheld but the latter prisoner was acquitted.

CRIME CHARGED.—1st count, theft of property valued at Rs. 1,600; 2nd count, knowingly possessing a portion of the above property.

CRIME ESTABLISHED.—Nos. 1 and 2, theft of property valued at Rs. 1,600, and No. 3, knowingly possessing a portion of the stolen property.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 29th April, 1854.

Remarks by the officiating sessions judge.—The door of an upper room in plaintiff's, Beebee Noor Jan's, house in which boxes containing her property were kept, was found open on the morning of the 7th February last. There were no marks of violence, and it was clear that the lock had been opened by key and been removed. Suspicion at first attached to no one, but after two days, Nuzur Ali, subsequently made a witness in the case, stated that he had had a conversation with Himut Ali, defendant No. 1, some time before, which showed him to be the thief. Himut Ali, an old servant of the plaintiff, and whose brother was also employed by the plaintiff and kept the keys, was accordingly apprehended, and confessed to have robbed his mistress on two occasions, 1st in January preceding and again in Maugh in company with defendants, Nos. 2 and 3, Khan Mahomed and Khairatee Khan, and another Jamal Khan. The articles carried off consisted of silver sticks, spears, &c., and those subsequently recovered, viz. No. 1, a valuable shawl, No. 2, a gold embroidered *andukcha*, No. 3, a gold *musnud* covering, Nos. 4 and 5, two swords, all recognized as belonging to plaintiff by witnesses, Nos. 16 and 17. The silver sticks, &c. were broken up, taken to Sewan, and disposed of. Himut Ali's confession led to the apprehension of the parties above named and another Behadur Ali of Sewan, father-in-law of Himut Ali. Himut Ali now denies the theft and says that the property produced was given him by the plaintiff to pawn, as she had no money to meet her expenses, the accounts being kept by himself, and he urges that he was led to confess to the theft on the assurance of the darogah that he would escape by doing so, but witnesses, Nos. 1, 2 and 3 prove his voluntary confession of the theft at the thannah and the production of 90 Rs. which he had deposited with Hossein Ali, his confession before the magistrate

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Case of HIMUT ALI and others.

being proved by the witnesses, Nos. 6, 7 and 8. Witnesses, Nos. 18 and 19, prove that in Poos last, they took on their visit to Sewan to the house of Behadur Ali, Himut with Khairatee and Jamal Khan, and that they had with them a bundle of which the contents were unknown, while witness No. 20, proves that he took by order of Himut Ali the bundle containing articles Nos. 1, 2 and 3, to Behadur Ali's, whence Himut Ali himself produced it in the presence of witnesses Nos. 9, 10 and 11. The witnesses for his good character prove nothing in his favor. Khan Mahomed also pleads *not guilty* urging that he was ill-treated at the thannah; but prisoners, Nos. 2, 3 and 5, prove that he confessed voluntarily after having been seized while attempting to escape with Khairatee Khan; Rs. 47, were found on him, admitted to have been received from Himut Ali, and a further sum of 20 Rs. was produced by witness, No. 23, who says he got it from Khan Mahomed to keep for him.

Khairatee Khan denies the charge, but admits having in Poos last accompanied Himut Ali to Sewan on a trading excursion, for which he was paid 15 Rs. He urges that after his return, he fell ill and produces witnesses in support of his statement, and he says that he was seized and threatened at the thannah and afterwards taken to the place where the swords were dug up in the presence of witnesses, Nos. 12, 13, 14 and 15; but at the thannah he admitted having received the 15 Rs. from the produce of the stolen property, and there is no reason to think that the swords could have been concealed in the premises occupied by him by the police, for the purpose of establishing the charge against him; because if such had been the object, it would have been enough to have hidden one sword in his premises and the other in those of the other party seized, Jamal Khan, on whom nothing was found. The moulvee finds defendants, Nos. 1 and 2, guilty of theft of property valued at Rs. 1,600, and defendant, No. 3, guilty of knowingly possessing a portion of the same, and, concurring in the verdict, I sentence Himut Ali, from his being a servant of the plaintiff, to eight years' imprisonment with labor in irons, including one year in lieu of thirty stripes. Defendant, No. 2, to six years' ditto and defendant No. 3, to five years' ditto, the three being jointly answerable under Act 16 of 1850, for the recovery of Rs. 693, balance of missing stolen property.

Remarks by the Nizamut Adawlut.—Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner No. 1, confessed in the police and before the magistrate and implicated Nos. 2 and 3: property was also found on him and sworn to by the prosecutor's witnesses.

No. 2 also confessed in the mofussil and his answer, before magistrate and sessions judge, is tantamount to a confession; he gave up the money which No. 1 had, as he said, entrusted to him on his own apprehension. Such a story cannot relieve him of

responsibility. We consider the prisoner guilty of aiding and abetting in the theft, and confirm the sentence passed on him by the sessions judge.

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The prisoner No. 3, is said to have produced from a place, from some ashes, two swords buried at a short distance from his house in a place which was quite accessible: the search was made six days after the theft, and the mohurir of the thannah is said by the witnesses to have been the person who pointed out the spot which was to be dug up. These are circumstances of suspicion which would not warrant the prisoner's conviction, he is acquitted and released.

PRESENT:

SIR R. BARLOW, BART., AND
H. T. RAIKES, ESQ., *Judges.*

MUSST. NEEDHEEA AND GOVERNMENT,
versus
MEWALOLL (No. 10,) AND RAMBHUGGUN (No. 11.)

Shahabad. 1854. July 10. Case of MEWALOLL and another.

Two prisoners, convicted of culpable homicide by the sessions judge, acquitted in appeal.

CRIME CHARGED.—Wilful murder of Nusseeb Gowalla, husband of Musst. Needheea, the prosecutrix.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 28th December, 1853.

Remarks by the sessions judge.—The facts of this case, as established by the evidence, are that the prisoners finding the deceased in the *kullean*, or granary, seized and severely beat him, and that the deceased died subsequently of the wounds.

Two witnesses, Nos. 1 and 2, depose to having seen the assault, which they state took place near the prisoner's house, whither they had dragged the deceased.

The magistrate records that the assault was caused by the cattle of the deceased having strayed into the *kullean*.

This is not apparent from the evidence.

It appears from the records that Mewaloll, prisoner No. 10, himself took the deceased to the burkundaz, stationed near the village, charging him with theft of grain from his *kullean*, and himself stating that he had caught him in the act and thrashed him.

All the incidents of the case confirm this statement, and although the magistrate subsequently dismissed Mewaloll's complaint as unproven, there is every ground for believing that his story is essentially correct. There is no evidence to the trespass of the cattle, the eye-witnesses only mentioning the facts from hearsay.

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Case of MEWALOLL and another.

The prisoner, No. 10, acknowledged before the magistrate that he had beaten the deceased.

He repeats the admission before the Court; but stoutly, and as it appears to me, with every appearance of truth maintains the assertion as to the cause.

In support of this assertion he gives several witnesses, who corroborate the statement, and whose evidence is to the full as valuable as that of the two eye-witnesses for the prosecution.

The deceased it is to be observed is a Gowalla, a caste notorious throughout the district for their audacious, inveterate and daring robbery, and the whole circumstances appear to me clearly to establish the truth of the prosecutors' statements; at the same time the assault and violence was cruel, and appears to have been continued after the momentary provocation had ceased, and when the excuse of protection of the property no longer existed.

Sentence passed by the lower court.—No. 10 to be imprisoned with labor in irons for seven (7) years, and No. 11, to be imprisoned with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. H. T. Raikes.) We do not think the eye-witnesses for the prosecution are worthy of credit; they say that the prisoner Mewaloll No. 1, having taken the deceased in the act of stealing *dhan* in his *rick-yard*, brought him to his house and then beat him and inflicted the injuries of which he died. On turning to the case in which the deceased was accused of the theft by Mewaloll, we find that he there says he was beaten by Mewaloll and his sons *near the rick-yard* outside the village, and then taken by them to Mewaloll's house and kept there all night and taken the next day to the thannah. To the police he said he had *no* witnesses of the beating, and in the foujdary he said Ajood Aheer and his brother Gungadhur were witnesses to his release from ill-treatment *on the spot* where he received it. From this it appears very evident, that the blows inflicted on the deceased were given at the *kullean* and not in the house of the prisoners, as alleged by the witnesses, and their statements to that effect are not entitled to credit.

There remains only the prisoner Mewaloll's own admission, who alleges that he detected the deceased in the act of carrying off a load of *dhan* from his rick-yard and struck him on the chest with the *lattee*, the thief then dropt the load and attacked him with a *lattee* in return, on which he struck him on the head and thus secured him. Under such circumstances, we consider the prisoner was justified in using violence in his own defence and to secure the thief, and that he cannot be held responsible for the effect of his blows; we therefore acquit the prisoner No. 1, and as there is nothing against the prisoner No. 2, we direct his release also.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

RAMPERSHAD SOOKOOL.

24-Pergunahs.

1854.

July 11.

Case of RAMPERSHAD SOOKOOL.

The prisoner was convicted of perjury in having before the magistrate denied the *fact* of his having given a deposition at the thannah in favor of the prosecution. The Court held that this denial of the fact was material to the issue of the case before the magistrate, as it was made with the intent of obtaining credit as a witness. The statement of the prisoner at the thannah not being on oath, it could not have been brought forward to sustain a charge of perjury on the ground of the contradictory nature of the deposition given before the magistrate.

CRIME CHARGED.—Perjury, in having on the 20th December, 1853, deposed on solemn declaration before the magistrate of the Twenty-four pergunnahs, in the case of Dhoomshee Monana versus Putiah Buhliah and others, charged with severe assault, attended with wounding, that he had not stated to the darogah of Entally, on the 18th November, 1853, that he had seen the defendants, Putiah and Shurfuddy, near the prosecutor's house with *lattees* in their hands, and Hessam Khansamah running away, and the prosecutor lying on the ground, bleeding from wounds on his head and hand; and further, in having deposed, that the deposition purporting to have been taken from him at the thannah, in the aforesaid case, had not been given by him. Such statement being wilfully false on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. E. A. Samuells, magistrate of the twenty-four pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the twenty-four pergunnahs, on the 22nd March, 1854.

Remarks by the officiating additional sessions judge.—This is a very clear case of perjury in swearing falsely. The charge is embodied in column No. 9, and explains all the particulars of the case. The evidence for the prosecution attests and verifies the records of the two contradictory statements, namely, that made by the prisoner on the 18th November 1853, before the darogah without oath, and that on the 20th December following before the magistrate on solemn declaration, and this proof establishes the prisoner's guilt. He denies the charge before this court and pleads ignorance of the Bengalee language, for what appears recorded as his statement before the police, repudiating the truth of that record. I examined three persons on his behalf and they were unable to speak to his defence, i. e. that he deposed before the darogah in the same terms as before the magistrate. I have no doubt of the prisoner's guilt, and heard him in court converse in Bengalee with the same ease and fluency as the Urdu language, which, he alleges, and I believe truly, to be his native tongue.

Sentence passed by the lower court.—To be imprisoned with labor and irons for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The indictment rests on the *fact*

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of the prisoner having made a certain statement (without oath) before the darogah and afterwards swearing he had not, when examined on oath by the magistrate; that this was a falsehood there can be no doubt. It is proved by the evidence of three witnesses, one of whom wrote the statement, that the prisoner made it, and as he admits that his own signature is attached to it, there can be little doubt that he gave before the darogah the version of the story imputed to him. This version is directly opposed to his later account of the matter on oath before the magistrate; it is not however the substance of these contradictory statements that constitutes the charge of perjury in this instance, so much as the prisoner's denial on oath that he had previously made the one imputed to him. The question is, was such falsehood material in the case then under trial, if not, it cannot be charged against him as *perjury*.

A case precisely similar to this will be found at pp. 404 to 406 of the Court's decisions for March last.

The Court in that case acquitted the prisoner remarking as follows. "The charge consists in the prisoner having denied on oath that she had made the statement, which the darogah recorded, the *fact* of having made the statement being only in question, not the *matter* of that statement. Now the *fact* of having made that statement was not material to the issue of the judicial proceeding then pending before the magistrate, for whether she had made it or not, could not have affected the parties on trial." In the present case, as in the one referred to, the *fact* of the prisoner having made the statement recorded by the darogah is in question, and the *matter* of that statement being proved, is available as any other evidence in aid of establishing the falsity of the oath taken before the magistrate, and we hold that the prisoner's denial of that fact is wilful perjury, because it was made with the intent of adding credit to his statement on oath, and in this way, as affecting his credibility as a witness in the case, it *was* "material to the issue of the judicial proceeding then pending before the magistrate.

Had the prisoner admitted the *fact* of having made the first statement, no charge of perjury could have been proved merely on the ground of the contradictory nature of the two accounts given by him on different occasions, however relevant to the trial, because the one not on oath, even if false, would not suffice to sustain a charge of that nature, but when the prisoner in order to get rid of its effect on the mind of the court, denied giving his former statement, he designedly attempted to mislead the court by swearing falsely on a point affecting his own veracity and therefore one which in all judicial proceedings is of material consequence to the issue.

With reference to the above remarks we convict the prisoner of perjury and confirm the sentence passed upon him by the sessions judge.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

ZUHEEROODDY (No. 8,) MOONSHEE (No. 9,) AND KULLIM (No. 10.)

Backergunge.

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Case of ZUHEEROODDY and others.

The prisoners were convicted of riot attended with culpable homicide and wounding, and were sentenced by the sessions judge to six years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, wilful murder of Shureutoollah; 2nd count, riot attended with the culpable homicide of Shureutoollah and the wounding of Azgur and Abool Hossein.

CRIME ESTABLISHED.—Riot attended with culpable homicide and wounding.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 16th May, 1854.

Remarks by the sessions judge.—It is alleged that the prisoners came to Cannaiah's* house with a view to seize that person, he having recently brought a complaint against them in the magistrate's court and made himself, in other ways, obnoxious to them. Cannaiah did not stay at home fearing the consequences, but Shureutoollah, the deceased, Azgur and Abool Hossein, who had casually met at Cannaiah's house, remonstrated with the prisoners and endeavoured to prevent their entering the house. On this, an attack was made on them and all three were wounded with spears and javalins. Seeing that Shureutoollah had fallen to the ground the prisoners left; Shureutoollah died in the jail hospital from lock-jaw brought on, as the medical officer deposes, from the effects of one of the wounds inflicted on him by the prisoners. The wound was situated on the top of the shoulder near the arm-joint, it was not severe in its nature, and death was more the effect of accidental circumstances than of any thing in the nature of the wound. The injuries upon the person of Azgur and Abool were also not of a severe nature.

* Witness No. 12.

There are five eye-witnesses† who saw the attack, and depose to the presence of the three prisoners at the time.

† No. 1, Asgur.
,, 2, Abool Hossein.
,, 3, Ozir Mahomed.
,, 4, Attaoollah.
,, 5, Omed Ally.

Their defence at the thannah was that they had gone in company, about twenty persons, to protect the forcible cutting by Shureutoollah, the deceased, of a rice crop, belonging to Azeetoollah. That on arrival they found the alarm was false and were returning home, when passing the village of Hanooah, where Can-

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naiah lives, he and his witnesses taunted them and did other things to provoke a fight, and that a fight was the consequence.

Before the magistrate and before the sessions, the prisoners deny that they took any part in the riot; they affirm that Shureutoollah was wounded in a fight which took place between the witnesses *among themselves*, and they each plead that they were themselves in other places at the time.

The witnesses called to substantiate the pleas of *alibi*, depose accordingly, but I place no credit in their testimony.

A riot is proved to have taken place and, from the evidence of the eye-witnesses and the admission of prisoners, Nos. 8 and 9, at the thannah, no doubt remains that the prisoners were all concerned in it, and that the parties named were severally wounded in the riot and that Shureutoollah, one of the wounded men, afterwards died from the effects of the injury so received.

The law officer finds the prisoners guilty of riot attended with culpable homicide. I agree in this verdict and though the wounds were but slight and the death of Shureutoollah was owing to other causes, more than the nature and severity of the wound, I still think a heavy sentence necessary, because the attack was not justified and because it is necessary by severe examples to discourage the people from using those dangerous weapons, the spear and the javelins (dangerous because uncertain). The prisoners were therefore sentenced to five years each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoners have appealed. The case is fully proved against them. Their contradictory defence before the police and before the magistrate, and the attempt made in the sessions court to establish *alibi*, in connexion with the direct evidence for the prosecution, are sufficient proof of their guilt. We confirm the sessions judge's sentence.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

SOFRA NUSSOO (No. 2,) ABEER NUSSOO (No. 3,) RABEE MUNDLE (No. 7,) KHOSAL GAEN (No. 8,) AND ROHMUT SIRDAR (No. 9.)

Rajshahye.

1854.

July 11.

Case of SOFRA NUSSOO and others.

Conviction of two prisoners as accomplices in dacoity and of three others of knowingly receiving plundered property upheld in appeal.

CRIME CHARGED.—1st count, dacoity in the house of Kader Mirdha; 2nd count, knowingly taking and being in possession of property obtained by dacoity; 3rd count, privity.

CRIME ESTABLISHED.—Nos. 2 and 3, being accomplices in dacoity, and Nos. 7, 8 and 9, knowingly receiving property plundered in dacoity.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th April, 1854.

Remarks by the sessions judge.—This was a simple dacoity, committed by a gang of nineteen or twenty men in the dwelling-house of two brothers, one of whom was absent on the night of the dacoity. Of the property plundered there was 500 rupees in cash. The prisoners, Nos. 2 and 3, were apprehended next morning by a chowkeedar, and another man, and a silver *balla* and silver *hunslee* were found on them, which they admitted before the magistrate they had taken off a child in the house; they also admitted they had been apprehended by witnesses numbered 1 and 2. On No. 7 were found two *talls*, a *lottah* and a gold *nuth*, and on No. 8, a *sutringee*, or striped piece of *dusuttee* cloth, which both the prosecutors and prisoners claimed, but the latter totally failed to establish their right to them. In the house of a person, by name Janoo Mollah, were found two *talls*; Nos. 3 and 4, and Janoo's wife deposed they had been thrown into her house by the wife of No. 9, and his son pointed them out, and after some considerable hesitation, deposed (in this court) that he heard from his mother that she had left the *talls* at Janoo's house. No. 9 claimed both *talls*, saying the police beat his son, and made him say the *talls* had been obtained in a dacoity; he examined seven witnesses, but they knew nothing of the matter, nor could they speak to the *talls* being the prisoner's. I have, therefore, on their foujdary confessions, convicted Nos. 2 and 3, of being accomplices in dacoity, and sentenced them to seven years' imprisonment with labor and irons; and each to pay a fine of 50 Rs. under Act XVI. of 1850, or their property to be attached and sold, after the expiration of three months, to realize

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the fine. Nos. 7, 8 and 9, I convict of knowingly receiving property obtained in dacoity, and have sentenced them to four years' imprisonment with labor and irons; all three confessed in the mofussil to the dacoity, but as the confessions were not certified in the prescribed form, they were not admissible as evidence. This has been brought to the notice of the magistrate. I directed the magistrate to pay a reward of 10 rupees each to the two witnesses, who apprehended Nos. 2 and 3, for the assistance given by them to the police. The trial was held under Act XXIV. of 1843, and the Court's Circular Order of the 5th July, 1844.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The confessions of prisoners, Nos. 2 and 3, before the police and magistrate, as well as the production of property from their possession, are fully established. The prisoners, Nos. 7, 8 and 9, claim the property found on them; several witnesses cited by each of the prisoners were examined, but none of them could recognize the property as belonging to the prisoners, whilst those named by the prosecutor proved it to be his. We uphold the sessions judge's sentence.

PRESENT:

SIR ROBERT BARLOW, BART., AND
H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

BEERSADHOO.

Rungpore.

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Case of BEERSADHOO.

Prisoner convicted of dacoity with murder and wounding, sentenced to capital punishment.

CRIME CHARGED.—1st count, dacoity in the house of Daooreah Das, attended with murder of the said Daooreah Das, with wounding of the witness Mussumut Nendo, with assault on the witness Koichaloo and Sumaroo, and with plunder of property valued at Rs 52-12; 2nd count, aiding and abetting in the said dacoity with murder, &c.; 3rd count, wilful murder of Daooreah Das; 4th count, aiding and abetting in the murder of Daooreah Das.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 15th June, 1854.

Remarks by the officiating sessions judge.—Daooreah Das deceased was asleep* in his cow-house with two of his children in the night of the 3rd February last, his wife and his two dependants (*pro-*

* No. 1, Mussumut Nendo.
,, 2, Koichaloo.
,, 3, Samaroo and deceased's deposition.

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jas) being in three other huts. About midnight he was awoke by the entrance of some eight or ten men with a torch and *bhooteea* knives, two of whom prisoner No. 1,* and Roopa, not apprehended, commenced hacking him with *bhooteea* knives, while the others plundered. His wife went to his aid but was repulsed by No. 1, and Roopa, both previously recognized by her, who after abusing, commenced striking her also with their knives, wounding her in several places until she fell down; the men then left taking with them eight head of cattle and various other articles of property of no great value. The two dependants,† who slept in deceased's huts, had come out on hearing the noise and saw eight or ten men with torches, but on being struck they both ran away without recognizing any one, though at the thannah they are made to say they recognized prisoner No. 1; one of these dependants‡ saw the dacoits going away with the cattle and on their both§ returning to the house, they found deceased covered with blood and wounds, who told them he had recognized prisoner No. 1 and Roopa as the parties who had wounded him, and his wife also shewed her wounds and named the same parties as the inflicters.|| A number of the neighbours came during the night or early next morning, and to all deceased repeated the same story naming prisoner No. 1 and Roopa. During the following day the jemadar of an out station came and took the deposition of deceased, and next day the darogah came and continued it; in both instances the deposition was given on affirmation, the deseased¶ besides repeating that he must die, that he had children and why should he tell a lie. He states, that awoke by some people going among his cattle, he called out, who was there; that he was seized by five or six men and cut with *bhooteea* knives; that prisoner No. 1 and Roopa were the parties who cut him and no others; that he recognized them both by their voices and by the torch light; that he also recognized Haranund son of Roopa by his voice only; that they wounded his wife also, and then carried off his cattle and other property; that prisoner No. 1 and Roopa had been his ryots but he had turned them off, they were such thieves that he had accused Roopa of stealing to the phanree jemadar, and consequently Roopa had a great spite against him; that he does

* No. 1, Mussumut Nendo, and deceased's deposition.

† No. 2, Koichaloo.
,, 3, Samaroo.

‡ No. 2, Koichaloo.

§ No. 2, Koichaloo.
,, 3, Samaroo.

|| No. 13, Jibdhun.
,, 14, Chandoo Chowkeedar.
,, 15, Nata Telee.

¶ No. 16, Kandoora.
,, 18, Ramakant.

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not wish for any search for his property, as he knows it has been carried into Bhootan, that he calls the occurrence a dacoity because a number of men came with noise (*dhoom dham*) and torches and carried off his property; that he cannot go now to the station, but may do so in two or four days. This deposition* was duly attested. Deceased's statement that prisoner No. 1 and Roopa had been his ryots, and were turned off by him about a year before on account of their bad character, was confirmed by the witnesses noted in the margin,† and by his wife witness No. 1, who says that they had not threatened deceased since they were turned out, but before that, used to bully him and tell her they would make her a widow.

* No. 16, Kandoora.
,, 18, Ramakant.

† No. 1, Mussumut Nendo.
,, 2, Koichaloo.
,, 3, Samaroo.
,, 4, Dakooah Chowkeedar.
,, 5, Nata Telee.

Prisoner No. 1, on being apprehended is said to have confessed that he and others went to carry off deceased's cattle, but that he turned back on the road while the others went on. Before the magistrate and in this court he denied all, alleging here that deceased who was always quarrelling with him, accused him on that account.

No evidence was forthcoming against the prisoners,‡ said to have been named by prisoner, No. 1, except in the case of No. 2, in whose house a brass plate and piece of gunny was found, claimed and said to be recognized as part of deceased's§ property; No. 2, is also said to have left his house after the occurrence.

‡ No. 10, Kanto Melch.
,, 11, Ramdhun.
,, 12, Gopal Das.
§ ,, 19, Tagoona Chowkeedar.
,, 20, Woopasoo.

On the 8th day from his being wounded, deceased died of his wounds which were very severe‖ consisting of one on the right breast cutting through a rib (according to the darogah's report, the entrails were visible) another on the shoulder nearly separating the arm from the joint, and another on the left thigh besides various smaller ones, the *bhootcea* knife with which they were inflicted is a straight bladed weapon one and a half or two feet long, with a wooden handle of about six inches in length.¶

‖ No. 1, Mussumat Nendo.
,, 2, Koichaloo.
,, 5, Chemroo.
,, 6, Tepra.
,, 14, Chandoo Chowkeedar.
,, 17, Mr. J. K. Walter.

¶ No. 1, Mussumut Nendo.
,, 2, Koichaloo.
,, 3, Samaroo.

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Opinion and recommendation of the sessions judge.

I consider the first charge of dacoity with murder and wounding to be clearly established against the prisoner No. 1, by the well attested deposition of deceased, and the evidence of witness No. 1, and seeing no extenuating circumstances I must recommend that he be sentenced capitally.

The evidence against the other prisoner No. 2, being altogether insufficient I acquitted him.

I have not attended to the evidence of witness No. 4, who could not understand the import of an oath, indeed did not seem to have the least idea that he was under any obligation at all to tell the truth and whose recognition of prisoner and others was first mentioned before the magistrate.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The deceased, Daooreah and his wife, witness No. 1, Musst. Nendo, immediately after they were attacked and wounded, named the prisoner, Beersadhoo, to their servants, as their assailant in company with Roopa, absconded. They both repeated to the police the same story, and were sworn to it. Two servants, who came to the spot on hearing cries, saw some men running away, and the deceased and his wife severely wounded. The medical officer deposed to the wounds and to the death of Daooreah in consequence of them.

The prisoner pleads *not guilty* before the magistrate and in the sessions court, and has summoned witnesses to character, but their evidence in no way exonerates him of the charge on which he is arraigned; most of them say they know nothing of his character.

The evidence for the prosecution is clear and consistent. We see no ground for mitigation of punishment, and in concurrence with the sessions judge, convict the prisoner of dacoity with murder and wounding, and sentence him to suffer capitally.

PRESENT:

A. DICK, ESQ., *Judge.*

GOVERNMENT AND SHAIKH BHUTTUN,

versus

TORIL (NO. 3, APPELLANT) JHURREE (NO. 4,) AND CHUKOREE (NO. 5, APPELLANT.)

Patna.

1854.

July 13.

Case of TORIL and another.

Conviction and sentence passed by the sessions judge in a case of assault with severe wounding upheld in appeal. Witnesses to an *alibi* should be closely questioned as to distance, and time, and place.

CRIME CHARGED.—1st count, wounding the prosecutor with intent to murder him; 2nd count, assault with severe wounding of the prosecutor.

CRIME ESTABLISHED.—Assault with severe wounding of the prosecutor.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 18th May, 1854.

Remarks by the sessions judge.—The prosecutor in this case states that he was engaged at work for Bhookun witness No. 4, who was in company with him at the time, close to the village of Boloa. That about an hour before sunset they observed the defendants, along with others not apprehended, coming towards them armed with clubs and *gurassas* (small axe) and the prosecutor knowing that ill blood existed between them and Bhookun, warned the latter to escape. The consequence of this was that the defendants fell upon the prosecutor, cut him severely on the back and leg, and otherwise so maltreated him as to endanger life. The medical officer states the wounds to have been both incised and contused, and of a very severe character. The defendant Toril confesses that he attacked the prosecutor, but pleads to having done it in self-defence and in resistance to an attempt to rob him of his money. The other two defendants plead an *alibi*, but nothing trustworthy is made out in evidence in respect to any of the defendants' answers. They are shown to reside in the village of Monaunpoor adjoining that of the prosecutor, and to have had a quarrel some days previously with the witness Bhookun who, on that occasion, struck the defendant Toril two blows with a stick. It was in revenge for this insult that the present assault was committed, and a very cruel and cowardly one it appears to have been, but I do not find the intent to murder established, and in this view the law officer concurs. He convicts on the second charge only and I accept the verdict. The defendants Toril and Chukoree are sentenced to seven years' imprisonment each with labor in irons, and defendant Jhurree, who is shown to have struck the prosecutor with a club only, to four years' imprisonment without irons and to pay a fine of 200 rupees, on or before the 1st of June next ensuing, or in default of payment to labor.

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Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The defence set up by the prisoner Toril, petitioner, from the very first, he has been utterly unable to prove. It appears from the darogah's final report in the case, that Toril's principal witness at once denied all knowledge of what he was called to prove and demolished it. Before the magistrate, his witnesses in like manner all denied knowledge of aught about it; and in the sessions court prisoner Toril, brought no witnesses to prove it. In the magistrate's court the single witness brought by Chukoree to prove his *alibi*, denied any knowledge of it. The Court see no reason for interference.

The Court observe, for future guidance, that when a prisoner calls witnesses to an *alibi*, and they testify to its truth, they should be closely questioned as to the distance of the respective places, the day and hour alluded to. This was nearly all omitted in the sessions court in recording the depositions of the witnesses of Chukoree.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

GOVERNMENT AND MOSAHEB,

versus

PEMNA ALIAS GOORDIAL (No. 23,) PARUSNATH (No. 29,) LUTCHMUN ROY (No. 30,) GOBIND (No. 31,) KHANTTURWA (No. 32,) LOCHUN (No. 33,) RUGHOO ROY (No. 34,) TOOFANEE ROY (No. 35,) BHUTTOOAH (No. 36,) BYJNATH (No. 37,) PUHULWAN SINGH (No. 38,) RUTTOO ROY (No. 39,) BUNDHOO (No. 40,) ASOO ROY (No. 41,) GOPAL (No. 43,) LULTA (No. 44,) HEMRAJ (No. 45,) NEAZALLY SHAH (No. 46,) LULTA (No. 47.)

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July 13. Case of PEMNA alias GOORDIAL and eighteen others.

Conviction and sentence passed by the sessions judge in a case of dacoity upheld in appeal.

CRIME CHARGED.—No. 23, dacoity with plunder of property valued at Rs. 2,941-13, belonging to Byram brother to Mosaheb Singh prosecutor. Nos. 29 to 41, 1st count, dacoity; 2nd count, having in their possession plundered property knowing at the time the same to have been obtained by dacoity. No. 43, 1st count, accessary before and after the fact; 2nd count, privity. No. 44, having in his possession plundered property knowing at the time the same to have been obtained by dacoity. No 45, having in his possession Rs. 10 part of the plundered amount, knowing at the time the same to have been obtained by dacoity. Nos. 46 and 47, privity before and after the dacoity.

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Case of PEMNA alias GOORDIAL and eighteen others.

CRIME ESTABLISHED.—No. 23, dacoity. Nos. 29 to 41, dacoity and having in their possession plundered property knowing it to be plundered. No. 43, being accessary before and after the fact of dacoity. Nos. 44 and 45, having in their possession plundered property knowing it to be plundered. Nos. 46 and 47, privity before and after the fact of dacoity.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore on the 20th April, 1854.

Remarks by the sessions judge.—Prisoners plead *not guilty.*

This case happened at mouza Dooglee on the borders of the Hazaree-baugh district. The house of Byram Singh, brother of the prosecutor, was forcibly entered in his absence by a band of men armed with clubs, with lighted torches, and a considerable amount of property carried off. It is not sufficiently proved in evidence that any personal violence was committed. Witnesses, Nos. 1, 2 and 3, depose to having recognised prisoner Nos. 23 to 28 inclusive, among the dacoits and to they themselves having been bound and thrown on their faces by them during the robbery, but as among the many confessions made both at the thannah and before the magistrate the name of Pemna alias Goordial (prisoner No. 23,) alone is mentioned and as there are no corroborating circumstances implicating any of the prisoners, Nos. 24 to 28 inclusive, I have in concurrence with the jury released them. The six above named prisoners Nos. 23 to 28, were apprehended immediately after the robbery, but no clue to the stolen property was found till Hashim Allee, the darogah of Mulleepore, with three Burkundazes, Mohadeo Singh witness No. 4, Basdeo Tewaree No. 5, and Jhundo Singh No. 7, having heard from witnesses Jyram and Jeetoo, Nos. 40 and 41, that suspicious parties within their beats, who had left their homes a few days before the dacoity, had returned to them and were spending money freely, went disguised into the villages where they soon on good grounds apprehended the rest of the prisoners Nos. 29 to 47, inclusive;* these all confessed both at the thannah and before the magistrate and their confessions have been duly attested before this court. Property well identified as part of that stolen was found in some of their houses, and though some of the witnesses in this court are not very clear as to in whose house or premises the articles were severally found, their own confessions are quite sufficient for conviction.

* Hurlal No. 42, escaped after committal.

The defence of the prisoners in this court consists in simple denial of both crime and confessions. The witnesses called by them speak generally to their bearing a good character previous to this occurrence.

The jury bring in a verdict of guilty against prisoners Nos. 23,

Nos. 29 to 41 inclusive and 43 to 47 inclusive, on the charges preferred against them severally in the calendar in which I concur.

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Case of PEMNA alias GOORDIAL and eighteen others.

I convict prisoner Pemna alias Goordial No. 23, on the evidence of eye-witnesses Nos. 1, 2 and 3, corroborated as it is by mention of his name by prisoner Parusnath, No. 29, as pointing out to the dacoits where Byram, whose servant he formerly was, kept his money buried. I convict Parusnath prisoner No. 29, Luchmun No. 30, Gobind No. 31, Khantturwa No. 32, Lochun No. 33, Rughoo No. 34, Toofanee No. 35, Bhuttooah No. 36, Byjnath No. 37, Puhulwan No. 38, Ruttoo No. 39, Bundhoo No. 40 and Asoo No. 41 on their own confessions of dacoity and having in their possession plundered property knowing it to be plundered. Gopal No. 43 also on his own confession of being accessary before and after the fact. Lulta No. 44, and Hemraj No. 45, also on their own confessions to having in their possession plundered property knowing it to be plundered, and sentence them to ten years' imprisonment with labor and irons. Neaz Ally No. 46, and Lulta No. 47 also on their own confessions to privity before and after the fact and sentence them to seven years' imprisonment with labor and irons, and under Act XVI. of 1850 to pay jointly and severally a fine of Rs. 2,306-14-6 as shewn in the statement above.

I have ordered ten rupees reward to be given to each of the burkundazes* witnesses Nos. 4, 5 and 7, and five rupees to each of the chowkeedars,† Nos. 40 and 41, who were all actively and successfully engaged in tracing the dacoits. Hashim Allee darogah deserves the highest credit for his exertions.

* Mohadeo Singh. Basdeo Singh. Jhundo Singh.

† Jyram and Jeetoo.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The comparative statement should have been prepared in a more compact and neat form, it occupies a great deal too much space. The *papers* on the record are not numbered, though there is a list with numbers attached to it. There is ample proof against the prisoners convicted by the sessions judge, we therefore confirm the proposed sentences, all the prisoners have appealed, but there is no ground whatever for interference with the sessions judge's orders. Looking at the successful result of the case, we are of opinion that the rewards given to the police are inadequate.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND MUSST. JASLASSEE,

versus

NOWAB KHAN.

Backergunge.

1854.

July 13.

Case of NOWAB KHAN.

Prisoner convicted of aggravated culpable homicide, having caused the deceased's death by wounding him in the ham with a sickle during a quarrel. Sentence 14 years' imprisonment.

CRIME CHARGED.—Wilful murder of Ushkur Gazee.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 26th June, 1854.

Remarks by the sessions judge.—A difference of opinion between the law officer and myself, as to the crime proved against the prisoner, gives occasion to this reference.

It appears that the prisoner's cow had trespassed on the pepper field of his neighbour and relative, the deceased.* The latter drove it off, and he was engaged in repairing the fence, which the animal had slightly broken, when the prisoner having returned from *haut* and hearing what had happened to the cow, came up and demanded of the deceased wherefore he had so beaten his unoffending cow. There were, at the time, in the deceased's *baree*, the witnesses, named in the margin,† and to them the prisoner appealed to judge between himself and the deceased, whether the damage done to the field was such as to justify the deceased in giving so unmerciful a beating to his cow. These parties then went with the prisoner to inspect both the animal and the field. The former was bleeding from several cuts of a cane or stick, and the field presented a few plants, broken here and there, together with the fence at the place where the animal made its exit. The parties then retired to the prisoner's *baree* and the deceased, hearing himself abused by the prisoner, came up to defend himself in person. Angry words passed between them, and the prisoner became at length so enraged with the threats and the defiance given to him by the deceased that he lost all temper. So hastening into his house and seizing a *sickle* (with which palm-trees are cut) he proceeded up to the deceased, who had his back turned to him at the time, and with it he gave him a severe wound on the ham and immediately decamped. The same day at 10 o'clock P. M. or only seven hours after the occurrence, the deceased expired.

The prisoner's defence before the police, and before the magis-

* Witness No. 6, Mussumut Khootee.

† No. 1, Muneer Khan.
,, 2, Badoolla.
,, 4, Zinnutoolla.
,, 5, Zuheer.

trate, was that the deceased first threw a *dow* at him, and then he retaliated by throwing his *dow* at the deceased. 1854.

At the sessions, his defence is that he never threw the *dow* at all, but that the deceased threw a *dow* at him, which hiting the post of his house rebounded and falling on the deceased's ham wounded him. July 13. Case of NOWAB KHAN.

He named witnesses to support this latter version, but they, on the contrary, say that the prisoner threw the *dow*, but this statement is too palpably false to obtain any credit. There is no doubt the weapon was in the prisoner's hand when he inflicted the wound as deposed to by the eye-witnesses.

The medical officer deposes that the tendons of the ham were cut through and through, together with the artery in that part and that the deceased must have soon expired from loss of blood. It is his opinion that a *dow* thrown at the deceased could not by any possibility have made such a wound.

Such then being the facts of the case, the question is, what does the prisoner's offence amount to? The law officer declared him guilty of wilful murder, but in my opinion, the prisoner's guilt does not amount to more than culpable homicide. The act was done in a sudden fit of anger during a quarrel. Malice there doubtless was, but it was malice without premeditation, and the part of the body at which the blow was aimed shows that murder was not intended, but that the prisoner only meant to inflict some injury on the deceased. I would convict him of culpable homicide and sentence him to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The facts of the case are very correctly stated by the sessions judge in his letter of referrence.

We agree with him in considering the offence proved only amounts to culpable homicide, but the attack on the deceased was sudden and cowardly, and the homicide, with reference to the weapon used, is, in our opinion, of an aggravated character; we therefore sentence the prisoner to fourteen years' imprisonment with labor in irons.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

KEERUTH CHUND.

Patna.

1854.

July 13.

Case of KEERUTH CHUND.

Prisoner convicted by the sessions judge of having embezzled certain money, the property of Government, acquitted in appeal, the evidence shewing that the money was not the property of Government, but of a private individual.

CRIME CHARGED.—1st count, embezzlement of the sum of Rs. 998-0-6, or thereabouts, being money belonging to Government which came into the charge by virtue of his office as treasurer of the sub-deputy opium agent of Patna's office; 2nd count, theft of the above sum of Rs. 998-0-6, or thereabouts.

CRIME ESTABLISHED.—1st count, embezzlement of the sum of Rs. 998-0-6, or thereabouts being money belonging to Government which came into his charge by virtue of his office as treasurer of the sub-deputy opium agent of Patna's office; 2nd count, theft of the above sum of Rs. 998-0-6, or thereabouts.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 24th April, 1854.

Remarks by the sessions judge.—The defendant had to make over charge of his papers and treasure to Thacoorpershad, the first assistant, by reason of the abolition of the office of treasurer. Accordingly on the morning of the 3rd September last, he came to office but left again immediately without counting out a balance of money still under his charge, for which an account had to be rendered, and without giving up to Thacoorpershad a bundle of treasury warrants, some of which were paid and some not. These were all under the defendant's own lock and key and as he did not appear for about ten days, Mr. King the sub-deputy opium agent caused the box to be opened, whereupon instead of finding Rs. 1,491-6-10, which ought to have been there, only 359-4, were counted out; amongst other things missing was a warrant for payment of 1,250 Rs. to Thacoorpershad on account of commission due to him, which warrant also specified eight other items of commission due to other subordinate omla of the department. These latter had been paid and the receipt of each *payee* attached to the warrant as proved by evidence, but the receipt of Thacoorpershad was wanting. The defendant was altogether liable under eight heads of account, besides the commission of the first assistant making a total of Rs. 1,491-6-10; and there were besides certain items due to him on account of his own salary, &c. By a fair adjustment of the balance it is shown that if the commission of Thacoorpershad had been paid, the defendant was in possession of more money than he ought to have, and if it had not been paid then the

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sum due from him was Rs. 998-0-6, as specified in the indictment. This result is not disputed and the matter for trial is accordingly whether or not the commission was *defacto* paid or not. It appears that the defendant kept a private chest under his own key, the public chest being under joint keys, viz. his own and the sub-deputy's. An issue of a warrant of the parties in whose favor it was made out happened to be present and they received it at once. If they were not present, or for other reason did not immediately demand it, the defendant locked it up and kept it for them in his private chest. In such case the necessary receipt of the *payee* was of course not attached to the warrant. The loss of this paper bars the possibility of actual proof in the present instance touching this important matter. The defendant declares that he paid to Thacoorpershad the whole amount, on the day that the warrant was issued. The evidence on the other side is strong and conclusive in my opinion as to non-payment. The deposition of Mr. King himself makes it clear, that after the warrant was issued Thacoorpershad offered the commission which was due to him, as part of the security which he would have to lodge in his new capacity of first assistant, and the respectable and trustworthy evidence of witnesses Nos. 9, 10, 11 and 12, corroborate the same statement. The fact of the treasurer's absconding too, without making over formal charge of the money and papers in his charge, is strongly presumptive against him. No explanation moreover is given as to why this should be the only warrant missing. The defence put in is decidedly weak and the explanations offered far from satisfactory; not a single omla of the office comes forward to exonerate the defendant, and the witnesses which he has called are low people and place-hunters about the sub-deputy's cutcherry. I convict the defendant on both charges laid in the indictment and the *futwa* of the law officer concurring, he is hereby sentenced to five years' imprisonment with labor in irons. Counsel for the defendant put in a plea to defect in procedure, namely, that as the warrant had completely issued and the sum had been debited in the Government accounts, that the rights of Government were thereby satisfied, and the charge of embezzlement as concerning them could not stand, but this is mere fiction. The question to be tried was whether Government or any of its accredited servant were free from responsibility before actual consideration had been received by the *payee*. If this were not done by reason of the laches or dishonesty of any servant of the Government, then certainly Government is authorized in appearing to prosecute on its own account, to say nothing of its duty as public prosecutor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The indictment as it is drawn will not stand. It is satisfactorily shewn that the money, the em-

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bezzlement of which forms the charge, is not the property of Government and was not in the hands of the prisoner, in his official custody as sub-treasurer of the sub-deputy opium agent at Patna. The allegation is that a deficiency of Rs. 998, was discovered on balance of the treasurer's account. In order to arrive at this conclusion it was necessary that it should be determined by the agent and the courts below whether the sum of 1,250 Rs., commission due to Thacoorpershad, had defacto been paid by the prisoner, the treasurer, to Thacoorpershad or not; they determined that it had not been paid to him and hence the balance stated is charged as deficit and the prisoner indicted under Act XIII. of 1850, as a defaulter *to Government.* By the papers on the record and the evidence of Mr. King, Thacoorpershad and others, it is established that the 1,250 Rs. were drawn by warrant in July, 1852, with other monies due to officers of the agency also made over to the treasurer and paid to the respective persons entitled to receive it. Thacoorpershad's commission was allowed by him to remain in the hands of the treasurer with the intention, as stated by Mr. King, to be given as a portion of Thacoorpershad's security for some new office, he was about to fill. Mr. King did not accept it but ordered Thacoorpershad to file a petition on the subject. We hold therefore that the money embezzled, which the prisoner denies by pleading payment, was the property of Thacoorpershad and no longer that of Government. It was in a separate box the key of which the treasurer alone kept and that key was, at Thacoorpershad's request, brought from the treasurer's house and given up by his wife. The Government treasure chest Mr. King describes as having two locks, one key being in his possession and another in that of the treasurer.

It was urged for the prisoner in the court below, and in this Court also that the Government had no interest in the money alleged to have been embezzled, and that the action on their part would not lie; this was by the sessions judge considered to be mere fiction and the prisoner was *tried and convicted* by that officer of embezzlement of *Government money.* The money was not the property of Government, as shewn by the evidence and documents on the record, and the prisoner is therefore entitled to his acquittal in this case.

The indictment might have been framed otherwise and so altered in the sessions court, as to have made the prosecution on the part of Government good, under the provisions of Section 14, Act XIII. of 1850, but this court cannot in an appeal by the prisoner, who has been convicted by the sessions judge, alter the indictment; we are under the circumstances bound to acquit the prisoner, leaving the local authorities to adopt such further course as they may think proper.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS. *Judges.*

GOVERNMEMT AND GUJROO BRAHMIN,

versus

KOORARAM BAGDEE (No. 1,) AND KUNAE BAGDEE (No. 2.)

Beerbhoom.

1854.

July 14.

Case of KOORARAM BAGDEE and another.

The prisoners' appeal was rejected, the finding of the property in their possession being proved.

CRIME CHARGED.—1st count, highway robbery, attended with assault of Julpoo Brahminee, mother of Gujroo, prosecutor, and theft of property, valued at Rs. 45-1-6; 2nd count, knowingly receiving plundered property, acquired by committing the above mentioned highway robbery.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 5th May, 1854.

Remarks by the officiating sessions judge.—Gujroo Brahmin, prosecutor, on oath states on the 8th March, 1854, or 7th Chyte 1260 B. S. I left the village of Nuggur early in the morning with my mother, Julpoo, one Mudoo and Kanae; on proceeding about four *coss*, we came to Kalajoora jungle at about 12 o'clock; on our way, we saw the two prisoners, they sometimes proceeded before us, and sometimes followed us. My mother and Mudoo were in advance, the former carried a bundle, containing our property, valued at Rs. 45-1-6, the latter was sick, myself and Kanae were some distance behind. I heard from my mother on coming up with her, about half an hour after the occurrence took place, she had been robbed and assaulted by the two prisoners. On our arrival at the village of Kurjoreea, we reported the robbery to the chowkeedar, we informed the ghatwal of Kurjoreea, the police came to Kurjoreea, and collected the inhabitants, my mother recognized the two prisoners from among them, as the party who had assaulted and robbed her. Their houses were searched, and the property before the court was found, which was in the bundle my mother was carrying, when she was robbed. From whom we got the contents of the bundle I am unable to say; it was given to us in Calcutta as charity.

Witness No. 1, Julpoo Brahminee, inhabitant of Jeesiota in the Punjaub, states she had been to Juggernath on a pilgrimage, and was on her way to Boidanath, corroborates the evidence of the prosecutor with regard to the robbery, she recognizes the prisoners Nos. 1 and 2, as the party who assaulted and forcibly took away the property she was carrying, she declares the

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cloth, &c., to be hers, and that she obtained it by begging in Calcutta, she never saw the prisoners before the 7th of Chyte, the day on which the occurrence took place.

Witnesses Nos. 3, 4 and 5, prove the confession made by the prisoner No. 1, in the mofussil, and the finding the property, Nos. 1 to 8, in the houses of both the prisoners.

Witness, No. 7, states he saw the two prisoners on the day of the robbery near the place where it occurred, and that he soon after met the witness, No. 1, carrying a bundle. On hearing of the occurrence, he immediately suspected the prisoners.

Witnesses, Nos. 8, 9, 10, 11, 12 and 13, prove to having seen the prisoner, No. 1, with a piece of gold supposed to be a part of the property stolen (but not found) on the day of the occurrence.

The prisoners were assisted by Deendoyal *vakeel.*

Prisoner No. 1, denies the charge and pleads *not guilty;* in defence states he purchased the cloth, Nos. 2 and 4, found in his possession from one Fyzoollah, a cloth merchant, on the day his house was searched, 15th of Chyte; No. 1, belongs to one Hulodhur Dobee, also No. 6; they were both placed in his care by that individual; No. 3, in like manner was given to him by one Mudoo Bagdee. That the confession he made in the mofussil was forced from him, by the ill-treatment received at the hands of the thannah darogah; that the prosecutor and witness No. 1, were instigated by the darogah, who offered Rs. 25 to them to point him out as the delinquent, and to swear the property found to be theirs. The confession now read he cannot say he ever made; calls ten witnesses to prove this statement.

Prisoner No. 2, pleads *not guilty*, and denies participation in the crime; accounts for the property found in his possession in the same way as prisoner No. 1, only that he purchased it from the said Fyzoollah, four months previous to the robbery; calls nine witnesses to prove the above, also to the ill-treatment received from the darogah and his good character.

The witnesses for the defence give evidence generally as if tutored, they bear out the story made by the two prisoners with great exactness.

* Kristopersad Dey.
Ramanund Ghose.
Denobundoo Singh.
Degambur Dutt.

The jury, consisting of the persons named in the margin,* unhesitatingly declared both prisoners guilty of the charges Nos. 1 and 2.

The court agrees in the verdict and remarks, that the evidence for the prosecution clearly brings home the charges against the prisoners. The defence is well got up and shows much cunning in the manner it was prepared. The chief witness was the cloth merchant, who declared to the selling the pieces of cloth to both prisoners. His story was improbable, inasmuch as the

cloth being cambric and of a fabric such as people in their situation in life, living in the jungles, would never possess or think of purchasing. He stated that the whole of the remnants produced were cut from the same piece. This was glaringly shewn to be false, as each remnant, when examined by professional cloth merchants, was declared to be of different texture, and varying in *width*. Nothing can be more conclusive than this. As to the remaining witnesses, who appeared with cloth of a similar kind under their arms to prove the purchase made by the prisoners, on comparing the several pieces with those found in possession of the prisoners, they differed so materially as to vitiate the whole of their depositions. Under these circumstances, the court sentence both prisoners to seven years' imprisonment with labor and irons.

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Case of KOORARAM BAGDEE and another.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) There is every probability that Uddit Chowkeedar was able from the first to speak to the identity of the prisoners, though, for reasons of his own, he refused to do so till the police had been enquiring in the neighbourhood for three or four days. We consider the property found in the possession of the accused was part of that stolen, and the possession of it brings home to the prisoners the crime as charged. We uphold the conviction and reject the appeal.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND ANOTHER,

versus

MEDNEE DOSADH.

Bhaugulpore.

1854.

July 14.

Case of MEDNEE DOSADH.

The prisoners' appeal was rejected on the proof against him.

CRIME CHARGED.—1st count, burglary and theft of property, valued at Rs. 1,036; 2nd count, having in his possession stolen property, knowing at the time the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Burglary and theft of property, valued at Rs. 1,036, and having in his possession stolen property, knowing at the time the same to have been obtained by burglary and theft.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th April, 1854.

Remarks by the sessions judge.—The house of Gobindyal, master of prosecutor, was burglariously entered on the night of

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the 1st of March. The burglars made several openings in the walls, but one only large enough to admit a man; suspicion was attracted to prisoner by his having been seen with others going towards Gobindyal's village, on the evening of the burglary. Witnesses, Nos. 11 and 12 saw him, and hearing of the robbery, told Nowrungee, prosecutor, of what they had seen and of the notorious bad character of prisoner. He, in consequence, accused him of the robbery, and having procured his apprehension and search of his house, silver articles of easy identification were found buried therein, beneath a quantity of bale fruit; witnesses Nos. 9 and 10, depose to finding the property as described and Nos. 7 and 8, identify it as that of the prosecutor. The articles are plates of silver from spear and punkah handles and neck ornaments bent and flattened. A quantity of iron spear heads and a broken punkah were found in another place in a field, and identified as part of the property stolen.

Prisoner confessed at the thannah to have been a party to the burglary and theft, and the confession is attested before this court by witnesses, Nos. 2 and 4.

Prisoner denies the theft and pleads an *alibi;* does not know how the property came into his house; denies the statements he made before the magistrate, which, as the magistrate observes in the calendar, are highly contradictory; one of the other says the darogah tortured him into the confession made at the thannah.

The jury bring in a verdict of guilty on both counts, in which I concur.

The prisoner is, by his own admission, an old offender, though there is no record of his imprisonment in this jail; I hold his thannah confession, which is full and complete and clearly attested, connected with the discovery of stolen silver articles buried in his house, to be quite sufficient proof of his guilt, and with reference to his former bad character, sentence him to seven years' imprisonment with labor in irons and to pay a fine, under Act XVI. of 1850, of Rs. 996-3-6, the balance of undiscovered stolen property,—the amount stated by prosecutor to have been stolen being, I think, satisfactorily confirmed in the evidence before me.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The prisoner, after making a confession at the thannah, repudiated it before the magistrate, and accounts for the property being found in his house by stating that two other persons placed it there in his presence, but he has no proof of it and the story is in itself improbable.

We see no reason to interfere with the conviction or sentence.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT,

KHOOSLA BUDDUCK.

Patna.

1854.

July 15.

Case of KHOOSLA BUDDUCK.

The prisoner was sentenced to transportation for life on proof of being a Budduck dacoit.

CRIME CHARGED.—1st count, dacoity in the house of Thakoor Mahajun at Mehdawul in the district of Gorukpore on 3rd December, 1839, and plundering therefrom property and cash to the amount of Rs. 2,991-8; 2nd count, having been a dacoit by profession and attached to gangs of Budduck dacoits.

Committing Officer.—Capt. Nation, assistant general superintendent for the suppression of thuggee and dacoity and joint-magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 1st July, 1854.

Remarks by the sessions judge.—Khoosla a Budduck dacoit numbered on the general register 2,382, was recognized at Patna on the 2nd of March, but whilst passing through the city on a pilgrimage to Byjnath, he has eluded arrest for fifteen years.

The evidence shows him to have been a professional dacoit from the age of ten years, at which period he was adopted by Dhurmoo a jemadar of dacoits.

He confessed before the magistrate but on commitment to the sessions, denied the charges preferred against him, and denied also that his name was Khoosla, but called no witnesses in support of his defence.

The approvers fully identified him, as having been concerned in a number of dacoities and more particularly in two well known daring attacks upon banking houses of Gya and Chupprah, which occurred fourteen or sixteen years' ago.

Both charges on the indictment are completely proved, and the jury who sat with me having recorded a verdict of guilty, I beg to recommend a sentence of transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The prisoner, though pleading *not guilty* before the sessions and alleging that his name is not Khoosla Budduck but Ramloll, had previously confessed before the superintendent under the name of Khoosla, that he was brought up by Dhurmoo jemadar from the age of ten years and had associated with the Budduck tribes and committed dacoities with the gangs they formed.

He was recognised by the wife of one of the approvers at Patna, while passing towards the city, and apprehended on the

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road afterwards, having eluded apprehension for several years, for though at one time in custody he escaped from his guards.

The prisoner's own confession before the committing officer, so entirely corroborates the statements of the approvers as to his identity, that we consider the charges entered in the calendar fully proved and, convicting him of the offences therein stated, we sentence him to transportation for life.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

HANIFF SHEIKH (No. 1,) TANGUR CHOWKEEDAR (No. 2.)

Rajshahye. 1854.

July 15. Case of HANIFF SHEIKH and another.

The prisoners' appeal was rejected on their admissions that the property found was the proceeds of the dacoity.

CRIME CHARGED.—Nos. 1 and 2, 1st count, dacoity in the house of Roobeer Sirdar; 2nd count, knowingly taking and being in possession of property obtained by dacoity; 3rd count, privity.

CRIME ESTABLISHED.—No. 1, being an accomplice in dacoity; No. 2, knowingly receiving property plundered in dacoity.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 10th May, 1854.

Remarks by the sessions judge.—This was a simple dacoity committed, according to the owner of the house, by a gang of eight or nine persons with three *mussals;* none were recognized, but on the *mofussil* confession of an accomplice, apparently, who has been released by the magistrate, these two prisoners were apprehended, and two *talls*, being part of the plundered property were discovered, one in the premises of a widow whose son had married the daughter of No. 1, and who gave her the *tall* of his own accord. The prisoner in the mofussil confessed to being concerned in the dacoity and this confession was fully proved to have been voluntarily made, one of the witnesses being the mohurrir who took it down.

The *tall* found on No. 2, he confessed he received from a person by name Buktardagee, and in this court admitted his mofussil confession when read over to him, and from this confession there can be no doubt he must have been aware the *tall* was obtained in this dacoity and he received it as hush money. I have therefore, on their *mofussil* confessions and the discovery of the *talls*, (identified as the property of Roobeer Sirdar) con-

victed No. 1, of being an accomplice in dacoity, and No. 2, of knowingly receiving property obtained in dacoity, and sentenced them as herein stated. The trial was held under Act XXIV. of 1843, and the Court's Circular Order of the 5th July, 1844.

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Sentence passed by the lower court.—No. 1, to seven years' and No. 2, to four years' imprisonment both with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The property was traced to the prisoners and admitted by them to be the proceeds of this dacoity, although they afterwards endeavoured to release themselves from the charge, by explaining away the circumstances under which these admissions were made by them. We see no reason to interfere with the conviction and reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

RAM KISHUB BANERJEA AND GOVERNMENT,

versus

FOOLKISSORE MUNDLE (No. 1,) PREMLALL PRAMANICK (No. 2,) SHUNKER SETH* (No. 3,) KRISHNADHUN MUNDLE* (No. 4,) GOOROOGOBIND MOOJUMDAR* (No. 5,) PURMANUND PRAMANICK (No. 6,) BUNKABEHAREE PRAMANICK (No. 7,) GUNGADHUR MUNDLE* (No. 8,) BRINDABUN DHAREA (No. 9,) CHACCOO PANDEY* (No. 10,) MUSST. ROOKNEE AWRUTH (No. 11,) AND SUMBHOONATH DHAREA (No. 12.)

Moorshedabad.

1854.

July 17. Case of FOOL KISSORE MUNDLE and others.

CRIME CHARGED.—Nos. 1 to 10, 1st count, wilful murder of Rampershad Bhuttacharjea, uncle to the prosecutor; Nos. 11 and 12, on the 1st count, and Nos. 1 to 10, on the 2nd count, accessaryship of the said crime before and after the fact; Nos. 11 and 12, on the 2nd count, and Nos. 1 to 10, on the 3rd count, privity to the said crime before and after the fact.

The prisoners charged as principals and accessaries in wilful murder were acquitted on account of the unsatisfactory and contradictory nature of the evidence.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 22nd April, 1854.

Remarks by the sessions judge.—The prisoners pleaded *not guilty*.

The particulars of this case are as follows. The prosecutor states that on the night of the 23rd Poos, 1260, the individuals

* Acquitted by the lower court.

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named Premlall, prisoner No. 2, Ramlall Lall Singh, Foolkissore, prisoner No. 1, Purmanund Pramanick, prisoner No. 6, Guddadhur, Bunk Pramanick, prisoner No. 7, Gooroogobind Moojumdar, prisoner No. 5, Ramdyal Chatterjea, Ramdhun Acharjea and Joyanath Acharjea assembled together and murdered his uncle Rampershad Bhuttacharjea (the deceased). On the night in question the prosecutor dined with his uncle, the deceased, and they afterwards smoked in separate rooms. Ramessur Roy, servant of the deceased, brought the *hookah* to him when his uncle had finished smoking, and while he was smoking he saw some one in a dirty dress enter his uncle's room, and after a little while come out again and go away, and he heard the noise of shoes as if some one else had gone away with him. He asked Ramessur if his uncle had gone out, and he answered in the affirmative. The next morning the prosecutor went to the room of his uncle to give him his *hookah*, but did not find him there; he then went to bathe, and on his return about 7 A. M. saw Jeebun Mundle and others searching for his uncle. He went to the cutcherry to look for him and not finding him there, joined with the gomashtah and other servants in a general search, but without success. Some time after Madhub Ghose and Brojo Ghose came to the prosecutor and told him that on hearing from Laloo Syce that vultures were flying about the tank of Catlamaree, they had gone there and found the body of the deceased. The prosecutor then informed the police and after giving his deposition before the darogah went with him to see the body. It was covered with wounds. The *kanthas* (quilts) in which the body had been wrapped and some other things were found lying by the side of the tank. Those quilts did not belong to the deceased. The *dhootee* and a *garroo* (a water-pot made of brass) which were also found there were recognized as belonging to the deceased. The deceased had a zemindaree and held a farm in the village and was not on good terms with the villagers. He had instituted a summary suit under Regulation VII. of 1799, against Premlall (prisoner No. 2,) for arrears of rent and realized the same; four or five days after this Premlall in company with others murdered the deceased. At the time the body was being taken up from the tank by Madhub Ghose he stated, that the prisoners had given out in the presence of Sadit Khan and six others in the zemindaree cutcherry, that they would cut the deceased into pieces.

Witness No. 1, Mohamoya.

This witness deposed that one night in the month of Poos, while she was sleeping in the house of her disciple Shumbhoo Dharea, prisoner No. 12, two or three persons suddenly entered, (the night was then far advanced,) while others stood outside on the road; she rose up and opened the door, and saw them there. They were calling out that they had come to seize the thief who had

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stolen the paddy. Witness was frightened and fled to the house of Purmanund, prisoner No. 6, with prisoner No. 12. Prisoner No. 6, was sleeping upstairs. Saw below Guddadhur Pramanick and his father Gooroo Churn, remained there that night and returned to the house of the prisoner No. 12, the next day. Saw prisoners Nos. 1, 2, 3 and 4, in the scuffle near the house of prisoner No. 12. This was the statement of the witness before the sessions court, she gave it most reluctantly.

Before the magistrate she had stated that the deceased had come to the house of prisoner No. 12, and remained there; while she was there, when prisoners Nos. 1 and 2, and Ramdyal Chatterjea came. She knew them by name. Others came whose names she did not know; pointed out Nos. 3 and 4; saw them all attack the deceased. Ramdyal Chatterjea had a sword. One person had a *tanghee;* fled from fear; came back after they had killed the deceased and removed the body and saw prisoner No. 11, cleaning the room; there were spots of blood every where; remained next day; wished to sell the deceased five *biggahs* of land and sent for him through prisoner No. 12; told prisoner No. 6, and the people in his house what she had seen, when they said, " We shall all be ruined;" for six months the prisoners had sought to take the life of the deceased. When her deposition before the magistrate was read to her she acknowledged it all and said it was true.

She added that she had heard the day before the murder from prisoner No. 11, that prisoner No. 2 had said, he would kill the deceased. She saw the prisoners Nos. 1, 2, 3 and 4, and recognized them by their voice; thinks there was a sword in the hand of the deceased; the other mattress in her room was for prisoner No. 11.

Witness No. 2, Lall Singh. Could not exactly remember the date, but it was about the 23rd of Poos, he was sleeping that night in the house of his master, prisoner No. 2; about 1 A. M. the prisoner No. 5, came to him and desired him to go with him, without arms, to the house of prisoner No. 1; on going there he saw prisoners Nos. 2, 1, 6, 7, 3, 9, 8, and 4, Premlall Pramanick, Foolkissore, Purmanund Pramanick, Bunkabeharee Pramanick, Sunker Seth, Brindabun Dharea, Gunga Kybert and Krishnadhun Mundle. They all took him with them to the house of prisoner No. 12, where he saw the body of the deceased lying, the flesh was cut to pieces. They desired him to remove the body, but he refused and told them he would inform the police, when they threatened to murder him in the same manner. He was afraid of their threats, and when they had wrapped the body of the deceased in a *kantha,* he went with them, while they carried it to the Katlamaree tank. The deceased had a *dhootee* with black border and a *mirjye.* (These being produced, the witness recognized them.)

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When he first went to the house of prisoner No. 1, his master, prisoner No. 2, said, "We have all murdered the deceased and you must go and remove the body." Heard them also say that when Ramdyal (who had absconded) struck the deceased with the sword, the deceased caught hold of it and that probably in their struggle it struck and wounded Ramdyal on the head. Prisoner No. 4, had a wound on his nose which he heard he had received in the scuffle. The witness on seeing the prisoner No. 4, Krishnadhun, stated that on the night of the murder saw the wound on his nose. The witness also saw prisoner No. 10, and prisoner No. 12, near the body of the deceased on the night in question. Prisoner No. 11, was outside. The deceased was at enmity with the prisoners. He had prisoner No. 2, seized in a summary suit and tied up in his cutcherry and released him after taking 75 Rs. from him; this happened the day after the prisoner's child, boy of four years old, died.

Witness No. 3, Krist Soondoree.

Stated that one night while she was taking her meal, prisoners Nos. 1 and 2, came to her house. (House of prisoner No. 12,) and she asked her mother-in-law, prisoner No. 11, what they had come for, she replied that the paddy of the Pramanicks' had been stolen and they had come to catch the thief. About midnight heard a noise; prisoner No. 11, called out to Alladee Byestomee, "What has happened, how can we conceal it?" Witness asked Alladee what was the matter and Alladee told her to be quiet for they had killed Bhuttacharjea. When the prisoners Nos. 1 and 2, first came, they went to the room where the Thacooranee Mohamoya (witness No. 1,) was, prisoner No. 12 was sleeping in another room. Alladee and witness slept in one room and Brojeshwaree (witness No. 4,) slept a little way off with her husband prisoner No. 9; prisoner No. 11, slept in the same room as the Thacooranee (witness No. 1); points out both the mattresses as belonging to them. The Thacooranee was about eight or nine days in the house; points out prisoners Nos. 1 and 2, confirms all she stated before the magistrate, she heard the groans in the house which has a door to the east.

Witness No. 4, Brojeshuree Awruth.

States that one night in the month of Poos last, while she was sleeping after dinner, some one called her husband, prisoner No. 9, and he went out. She also rose up and came out and saw prisoners Nos. 1 and 2, and Ramlall come out of the house in which her mother-in-law prisoner No. 11, and the Mohamoya Thacooranee were sleeping, and in the verandah of which her father-in-law, prisoner No. 12, was sleeping; asked prisoner No. 11, what they had come for, she replied that the prisoner No. 5, was with the Thacooranee and they had come to arrest him; went afterwards to the Thacooranee's room. The mattresses on which she and the prisoner No. 11, had been

sleeping were not there. The pillow covers and the clothes that were in the room were stained with blood, which the prisoner No. 11, afterwards washed: she cleaned and washed the house in the same manner, as she used to do every day. There the witness recognised the two *kanthas* as belonging to her father-in-law prisoner No. 12. The Thacooranee used both; prisoner No. 11, slept at her feet; they were both given for the use of the Thacooranee by the prisoner No. 12. Her husband, prisoner No. 9, did not accompany prisoner No. 2 and the others. When she asked him what had happened he said nothing. When she rose up from her bed she did not see prisoner No. 12 in the house. She heard the sound of moaning proceed from the house where the Thacooranee was sleeping before the prisoners Nos. 1 and 2, left it. She afterwards heard from the villagers that Rampershad Bhuttacharjea had been murdered. The Thacooranee had been in the house seven or eight days; when the prisoners Nos. 1 and 2, were leaving the house, prisoner No. 11, told them to bring people from the house of prisoner No. 2; saw the prisoners very near, was in the verandah when they passed close by. (The bloody cover found with the body being produced she identified it as that which used to be spread over the large mattress.) The cloth of prisoner No. 11, bore marks of blood, but there was no blood on the floor of the house. The deceased had no enmity against prisoner No. 12, but against prisoner No. 2, who is on good terms with prisoner No. 12.

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Witnesses
No. 15, Khoodeeram Ghose.
,, 16, Nubbokant.

Deposed to having seen blood in the house of the prisoner No. 12.

No. 20, Teenoo Mundul.

Heard the noise of five or seven persons going to the house of prisoner No. 12, at night.

No. 21, Neemye Shaha.

Heard a noise in the house of prisoner No. 12, on the night of the occurrence.

No. 22, Ishwar Chunder.

Saw the prisoners Nos. 1, 2, 6 and 7, and Ramlall about 3 A. M. going towards the *meydan*. They passed close to him, points them out. The road they were going is the only road from the house of prisoner No. 12, to the *meydan*.

No. 23, Ramchunder Shaha.

About midnight or after, heard a moaning sound as of a person near death, proceeding from the direction of the house of prisoner No. 12,—only one house between it and his own. After which he heard some persons passing and talking low. They were going the way that leads to the tank.

No. 24, Sheikh Laloo.

About midnight heard sounds as of beating in the house of prisoner No. 12, and the next morning when he was going to bring grass, he

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saw the body of Rampershad Bhuttacharjea in the Catlamarce tank. There were vultures on it; saw bits of a *mirjye* on the arms, a *dhootee* under the body, one mattress in the water and the other on the bank, the brass water-pot was found by the chowkeedar in the tank.

Witness No. 25, Brojolall Bhanga.

Saw about 9 at night five or six persons passing by his house, of whom he recognized prisoners Nos. 1, 2 and 5; they were going north, his house is south of the house of prisoner, No. 12.

No. 26, Shama Bewa.

Heard about midnight a noise in the house of prisoner, No. 12, on the night of the occurrence and saw prisoners Nos. 1 and 2, come out of it with others and go towards the west. The tank is to the west. Before the magistrate this witness said she saw prisoner No. 1, and Ramlall Pramanick. On being questioned says, she never mentioned Ramlall, but Premlall, prisoner No. 2, points out both prisoners, Nos. 1 and 2.

Ramissur Roy, witness summoned by the sessions judge.

Confirms the statement of the prosecutor regarding the deceased, his smoking and afterwards going out of the house with a brass water-pot and the discovery of his body, after searching everywhere, near the tank the next day. Identifies the water-pot; was four or five years in his master's service; heard him say, that the Thacooranee wanted to sell him some land, and that he wished to buy it. Deceased was fond of women. He had disputes with most of the prisoners, particularly with the prisoners, Nos. 1, 2, 6 and 7. Heard the prisoner No. 2 once declare before many persons in his master's cutcherry that he would cut the deceased into pieces. He said this when he was arrested in the summary suit the day after his child died. (Identifies the *dhootee.*) About quarter of an hour or twenty minutes before the deceased left his house that night, saw prisoner, No. 1, and Mahomud Sircar servant of prisoner, No. 6, come from the bazar on the east and go away towards the north.

Loharee Sheikh, witness summoned by the sessions judge.

Deposed to having seen the body of the deceased taken out of the tank and reported the circumstance to the prosecutor. Brojo Ghose and Madhub Ghose first took the body of the deceased out of the tank. It was cut all over. Identifies the *dhootee* and clothes found near it and deposes to the enmity between the deceased and the prisoners, Nos. 1 and 2 and 6 and 7. The prisoners, Nos. 2 and 6 are cousins; prisoner No. 2 threatened to take the life of the deceased.

Gopaul Sonar ditto.

Stated that when the peon with the process in the summary case arrested the prisoner No. 2, and took him to the cutcherry, the

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Pramanicks and the prisoners, Nos. 1 and 5 went to the cutcherry and used threats to the deceased, that they would cut him in pieces and cause his body to be eaten by dogs and jackals.

Gungaram Kotal ditto. Heard Prisoners Nos. 1 and 2, make use of threats.

Bissonath Ghose ditto. Heard prisoners, Nos. 1, 5, 6 and 7 and others use violent threats.

Toofanee Sheikh, servant of the deceased, deposed that on the

Toofanee Sheikh. night of the murder he was standing between 8 or 9 P. M. near the door of his master's house, when Mahomud Sircar came by and asked where the Bhuttacharjea was; witness told him he was eating his dinner, when he went away.

The prisoner No. 11, confessed before the magistrate to the effect, that a few days before (she could not remember the date) she was sleeping in her house (a *chala*) where her husband was also sleeping, and that in the house having a door towards east the wife of her spiritual guide was sleeping. A little before the moon had set, she heard a noise in the house and saw prisoner, No. 1, with five or six others in the house. She could not recognize them all. They murdered Rampershad Bhuttacharjea in her house. Prisoners, Nos. 1 and 2 went and brought Lall Singh there. After they had removed the body of the deceased she washed the house; prisoner No. 1 said at the time that the servants had stolen the paddy, and he had put a stop to the theft. The deceased Rampershad had come to her house in consequence of a previous acquaintance with the wife of her *gooroo*. She did not see who murdered the deceased in the house, but she saw prisoners Nos. 1 and 2 and five or six others, whose names she does not know. She did not see any blood on the bed but on the floor which she washed out. When prisoner, No. 1, was going out of the house she caught hold of him, and the consequence was that her clothes were stained with the blood which was on his person. When she was taking her meal the prisoner No. 1, came and told her to sleep in the *chala* that night as they were going to beat the paddy stealer. She did not see when they murdered the deceased. She saw the body of the deceased after the murder. This confession was denied by the prisoner in the sessions court.

The civil surgeon, who examined the body of the deceased, deposed before the magistrate "that he had no doubt whatever that the deceased died from the effects of the wounds received by him, viz. a very severe wound on the forehead and another across the upper part of the head, both extensively dividing the skull; both his hands were nearly cut; there was a deep cut on the right shoulder and another on the left foot; there were several other wounds; all these wounds were inflicted with a cutting instrument."

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The examination of the civil surgeon could not be taken in this court. He was absent at the presidency on sick leave, with the intention of applying for a further extension of six months, which he subsequently obtained. I did not consider it necessary to postpone the trial till the expiration of his leave. There was abundant evidence to the fact of the body having been cut and hacked in pieces, and there could be no doubt that the deceased had died from the injuries he had received.

The case was tried with the aid of the Mahomedan law officer who delivered his *futwa* to the following effect. The prisoners Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, deny the charge stated in the calendar. There are no witnesses to prove by whom the murder was committed. The witness Mohamoya is a notorious woman and her evidence is contradictory. From the evidence of the witnesses, Nos. 2, 3 and 4, and the way in which the prisoner No. 12, gave his defence before the magistrate, and the confession of the prisoner No. 11, as also from the evidence of the witnesses to the *soorut-hal* and the deposition of the civil surgeon, there is a violent presumption that the prisoners Nos. 1 and 2, with the assistance of others murdered the deceased; and as the murder was committed in the house of the prisoner, No. 12, and the prisoner No. 9, is the son, and the prisoner No. 11, the wife of the prisoner No. 12, and as the prisoner No. 11, cleaned the house, there is also strong presumption of their being privy to the murder. All these five prisoners have therefore rendered themselves liable to *tazeer*, but the punishment is to be imposed upon them according to the nature of the crime established against them respectively.

The charge of privity against the prisoners, Nos. 3, 4, 5, 6, 7, 8 and 10, is established only by the evidence of the witness Lall Singh and there is a suspicion against the prisoner, No. 4, from the slight wound which he received upon his nose, and as besides this proof there is no other presumptive sufficient evidence to warrant their conviction, he acquitted these seven prisoners.

I agree with the law officer in the conviction of the prisoners, Nos. 1 and 2, on violent presumption of the wilful murder of the deceased.

From all the circumstances of the case as they appear upon the record, and the whole evidence taken together, no doubt can be left upon the mind, of the deceased having met with a violent and cruel death. It is equally beyond doubt that death took place in the house of the prisoner No. 12. The magistrate was on the spot very soon after the occurrence and describes the state of the room where the murder took place. There were marks of blood still visible in different places.

Mohamoya the witness No. 1, or, as she has been called, the Thacooranee, gave her evidence most reluctantly. It was evident throughout that she wished to screen the prisoners as

much as possible, and was influenced by the fear that she herself would suffer from the exposure. She was chosen by the prisoners as the instrument by which they might wreak their revenge upon the victim of their conspiracy. She was their priestess and his mistress. The deceased was dissolute and tyrannical. He had given offence to most of the prisoners, especially to prisoner No. 2, who was seized and taken to his cutcherry and tied up there till he paid what was demanded of him, and this only one day after the prisoner's child had died. The story of his being invited to the house of prisoner No. 12, at the request of the prisoner No. 1, in order to come to a settlement regarding some land belonging to her, which he wished to purchase, is not so probable as that he had had previous criminal connection with her, and had been invited by her, in connivance with the prisoner, to renew it. Whatever was the object it succeeded in enticing him to her room in the house of prisoner No. 12, where he was butchered to death. The woman in giving her evidence seemed hardened as well as abandoned, and it is to be regretted that for her participation in so atrocious a crime she was not put upon her defence instead of being allowed to give her testimony.

The evidence however of Lall Singh, who was allowed to turn Queen's evidence, and the evidence of the women who were in the house the night of the murder, Krist Soondoree and Brojeshwaree, together with the circumstantial evidence, are sufficient to produce a violent presumption amounting almost to legal proof that the prisoners Nos. 1 and 2, were the principals. I would recommend that they be imprisoned for life with labor in irons and transported beyond sea. The law officer acquits the prisoners Nos. 3, 4, 5, 6, 7, 8 and 10. I differ with him and acquit only the prisoners Nos. 3, 4, 5, 8 and 10; convicting the prisoners Nos. 6 and 7, of being accessary after the fact, I would recommend their being imprisoned for seven years with labor in irons. The law officer convicts the prisoners Nos. 9, 11 and 12 of privity and accessaryship. I agree in the conviction of the prisoners Nos. 9 and 11 as to privity, and convict them of being accessary after the fact, and would sentence prisoner No. 9, to seven years' imprisonment with labor in irons and prisoner No. 11, to seven years with labor suitable to her sex, and convicting the prisoner No. 12, of being accessary both before and after the fact, would, under all the circumstances, sentence him to imprisonment for twelve years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) Twelve prisoners were committed to the sessions in this case.

Prisoners Nos. 3, 4, 5, 8 and 10, were released by the judge. The prisoners Nos. 1, 2, 6, 7, 9, 11 and 12, are before us. The chief evidence for the prosecution is that of a woman Mohamoya, that of Lall Singh a prisoner admitted by the magistrate as ap-

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prover, and that of Krist Soondoree and Brij Soondoree two women who were in the house of the prisoner No. 12, where Musst. Mohamoya was sleeping, on the night of the murder of the deceased Rampershad Bhuttacharjea, the uncle of the prosecutor.

Lall Singh only named *all* the prisoners throughout, but his deposition leads to no satisfactory conclusion as to the part taken by any of them; his statement is merely a general one as to the murder having taken place, without detail of any fact attending it or any evidence in support of a fact.

The character given by the sessions judge to Musst. Mohamoya is fairly deducible from the circumstances adverted to; her statements, so far as they go, only tend to affect the prisoners Nos. 1 and 2, but they are contradictory and irreconcilable, and are not such as would justify a conviction.

The other two women Krist Soondoree and Brij Soondoree vary greatly in their statements of what occurred at the spot; Krist Soondoree says in the sessions court that prisoners Nos. 1 and 2, came to the house of prisoner No. 12, made their obeisance to Musst. Mohamoya while she was eating her dinner and afterwards left it. In the magistrate's court she had said that they entered and shut the door and remained till 12 o'clock at night.

Brij Soondoree named the prisoners Nos. 1 and 2, in the sessions court; before the magistrate she named prisoner No. 2 and one Ramlall as the parties who entered the house.

The whole of the evidence is inconsistent; no two witnesses support each other's statements; the discrepancies may have reference to time, but it was necessary, in order to give weight to the evidence of those who have deposed to the presence of the several prisoners at the house on the night of the murder, that the exact time of their being on the spot should have been clearly determined and established.

The above remarks are applicable to the prisoners Nos. 1, 2, 6, 7 and 9. As regards Nos. 11 and 12, husband and wife, we observe that prisoner No. 11 admitted she had washed out the marks of blood before the magistrate; she pleaded *not guilty* before the sessions. There is very strong presumption that the murder was committed in their house; the magistrate in his enquiry saw spots of blood in it, she did not report the circumstance to the thannah; but immediately on the arrival of the police told them what she had done, and stated the fact of the deceased having been carried off from the house; this does not afford proof of accessaryship or even of privity to the murder against her.

Prisoner No. 12, denies all knowledge of the murder, he heard a noise and ran away to another house and did not return for some time, and heard only of the murder the next day.

Upon a review of the whole of the evidence brought forward, we are of opinion that the prosecution breaks down; no doubt a deliberate murder was committed, but the proof adduced is not sufficient for conviction of the prisoners; we acquit and release them.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

BUKSHA NUSSOO.

Rungpore.

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Prisoner convicted by the sessions judge of perjury, recommended for remission of punishment, acquitted by the Court.

CRIME CHARGED.—Perjury in having on the 30th of March, 1854, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the darogah of thannah Foorunbaree in zillah Rungpore, that on the night of Tuesday, the 16th of Choite, Zahir Nussoo Patwaree and his servant, Phul Mahomed, tied the door of the house which faces eastwards, in which he was sleeping, cut through the *tattee* of the house which faces southwards, carried off his daughter Musst. Tuntunee and threw her down in the plain two or three teers to the north of his house, that first Zahir and then Phul Mahomed committed rape upon her, that as they were leaving her, he (the prisoner) hearing her cries ran up and seized Zahir by the hair, but that they knocked him down, that when he heard the noise not being able to open the door which was tied outside, he broke out through the *tattee*, that he heard from Tuntunee that the two above named persons had beaten and wounded her, that he saw that one door had been cut and another tied, that Zahir Patwaree wished to marry Tuntunee but that he, her father, would not allow it, and that therefore Zahir had threatened to dishonor both her, and his (prisoner's) wife; and in having on the 20th of April, 1854, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Rungpore, that on a Tuesday in Choite last, at twelve at night, on his daughter, Tuntunee, calling out from the house which faces south, he went out of the house which faces east, but saw no one, that he searched round the house but seeing no one went inside again and slept, that he went out of the door of the house which faces east, that no one had tied the door, that he did not break out through the *tattee*, that when he went out he found Tuntunee inside the door of the house which faces south, that she did not say that Zahir Nussoo and Phul Mahomed had assaulted her, that she had fallen among the roots of a jack-tree and so wounded herself, that he knows nothing of Zahir Mahomed wishing to marry Tuntunee, that Zahir had never threatened to dishonor Tuntunee and his (prisoner's) wife, that on the night in question, they did not knock him down when he seized Zahir by the hair, and that on no night in Choite did he either see or hear of Zahir and Phul Mahomed taking out Tuntunee and committing rape on her; such

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statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore on the 20th June, 1854.

Remarks by the officiating sessions judge.—Buksha, prisoner No. 13, deposed on a solemn declaration taken instead of an oath before the darogah of Foorunbaree in zillah Rungpore, on the 30th March, 1854, that Zahir Nussoo Patwaree and Phul Mahomed had carried off his daughter, Musst. Tuntunee, from his house on the night of Tuesday, the 16th Choite, and had each committed a rape upon her, that Zahir had before wished to marry Tuntunee, but that he, prisoner would not consent, and that Zahir had then threatened to dishonor her and also prisoner's wife. On the 26th of April, before the officiating magistrate of Rungpore, he affirmed on a solemn declaration instead of an oath, that he neither saw nor heard of Zahir Patwaree and Phul Mahomed taking out Tuntunee and committing a rape on her, withdrawing in part from the whole charge preferred by him to the darogah. He was consequently committed to the sessions on the 29th April, on the charge mentioned above.

His depositions at the thannah* and before the magistrate† were well attested; when his answer to the charge was taken by the magistrate, he confessed that he had told different stories, but the confession was for some unexplained reason not attested in the proper form; here however he repeated his confession, declaring his deposition at the thannah to be true, but that he had retracted it before the magistrate, because he had been beaten and threatened by Zahir Patwaree and was afraid to persist in it.

Witnesses,
No. 1, Banee Das,
2, Kalee Mohun Sen, darogah,
3, Dhunnah.
No. 4, Ata Ulla,
5, Sona Ulla.

The futwa of the law officer,—opinion and recommendation of the sessions judge.—The law officer convicted the prisoner on full legal proof, in which, I agreed, I sentenced the prisoner accordingly to three years' imprisonment with labor, but I refer the case in order to have the punishment mitigated. The prisoner's accusation of rape was not established and he has no witnesses to prove that the Patwaree beat and threatened him, a perusal of the proceedings however, leaves no doubt in my mind as to the truth of both these statements, and Zahir Mahomed was acquitted by the magistrate on the charge of rape, not because he was innocent, but because there was no sufficient evidence for his conviction. Under the circumstances, I consider the imprisonment which prisoner has already undergone,‡ a more than sufficient punishment and recommend his immediate release.

‡ Since the 20th April.

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Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) Under the circumstances, as stated by the officiating sessions judge, no conviction could stand. If the offence was committed and the charge of rape preferred at the thannah was true, and if the prisoner did not give a deliberate and wilful false statement on oath before the magistrate, owing as the judge himself decides to the intimidation of Zahir Mahomed (which deprives the act of all culpability in the eye of the law,) then the prisoner was entitled to an acquittal in the sessions court.

To sentence and punish a party for having given a false statement on oath, when that statement was made as admitted under the influence of fear, is a very mistaken view of the law. We acquit the prisoner and order his immediate release.

PRESENT:

A. DICK, ESQ. SIR R. BARLOW, BART., H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

NUNKOO SINGH, HURGEANEE SINGH, DOMUN KAHAR, AND GOVERNMENT,

versus

PURBHOO SINGH RAJPOOT (No. 1,) DIRPNATH* SINGH (No. 2,) BISHOONDHAREE† SINGH RAJPOOT (No. 3,) AND UDDHEAN SINGH RAJPOOT (No. 4,)

Behar.

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Case of PURBHOO SINGH and others.

Two prisoners convicted as accomplices in a riot attended with wilful murder, sentenced to fourteen and ten years' imprisonment respectively.

CRIME CHARGED.—1st count, accomplices in a riot attended with the wilful murder of Bundhoo Kahar deceased; 2nd count, accomplices in a riot attended with the wounding of Bundhoo Kahar, Nunkoo Singh and Hurgeanee Singh and in consequence of the severe wound sustained in the said riot Bundhoo Kahar died fourteen days after.

Committing Officer.—Mr. H. Davies, officiating deputy magistrate at Shergotty.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 15th April, 1854.

Remarks by the sessions judge.—The two Rajpoot prosecutors and all the prisoners are nearly related, but the family property has been held divided and separate for some years past. The accused present, and absconded, are cousin or cousin's children of Baboo Ram Singh, who is still

Nunkoo Singh and Hargeanee Singh's evidences and the prisoner's defences especially Dirpnath Singh's, prisoner No. 2.

* Since dead.

† Released by the lower court.

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alive, and has issue, an only daughter, the mother of the two Rajpoot prosecutors, to whom Baboo Ram Singh assigned Kuchra under a deed of sale. This gave rise to family feuds and disputes so far back as 1255 F., which however ended at the time in the two prosecutors retaining undisturbed possession, and though such grounds of quarrel may account for the ill-blood between the two parties, it is of too distant a date, without any intermediate renewal, to have been the immediate cause of the occurrence under trial, which Nunkoo Singh thus explains. Koormypoor possessed by the opposite party, and Kuchra by themselves, were held under one and the same mokurrarree title. There had been a suit by the Maliks against Baboo Ram Singh, and the accused demanded their share of the expenses of suit from the two prosecutors, because it had equally protected their mokurrurree title. The prosecutors demurred and there had been much altercation about the matter some three days before the occurrence under trial. These expenses of suit were not ordinary, but extra-judicial, on account of private expenses, rated at Rs. 1,500, the prosecutor's quota of which was 500. The prisoners have allowed this explanation of the only ostensible cause of the occurrence under trial to stand unquestioned and unnoticed.

Midday of 29th January last the two Rajpoot prosecutors, together with the deceased, their servant, and a few riots were in their Kuchra thrashing floor, where about one thousand maunds of grain, their private property, lay ready stored. The accused hold lands largely and are influential people of the neighbourhood. The thrashing floor was suddenly attacked by a large body of armed men headed by Futtehnarain (absconded) Bishoondharee's (prisoner No. 3,) own brother and who figured in the disputes of 1255, F., accompanied by the prisoners and others, absconded, when the rioters commencing to carry off the grain, the deceased was in the act of pushing one of the rioter's baskets aside, when on Futtehnarain's order Doonda, Bishoondharee's son (also absconded) cut him down with a sword. Nunkoo Singh prosecutor received a blow on his head struck with an iron bound club by Purbhoo Singh, prisoner No. 1, and Hurgeanee Singh prosecutor, who had a stick in his hand, warded off a sword blow aimed at him by Govind (absconded,) which however grazed his forehead and nose. The rioters then effected their purpose and carried off all the grain without a person on their side being touched. The two prosecutors' wounds were superficial.

Witness No. 1, Sohun Chowkeedar,
" 2, Jewdharee Singh,
" 3, Petumber Singh,
" 4, Rajoo Singh,
" 5, Uheeburo Singh.

The deceased gave his evidence before the police on 30th January last, and before the officiating deputy magistrate of Sher-

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gotty on 2nd of February following, much to the same effect, naming Purbhoo, prisoner No. 1, and Dirpnath Singh, prisoner No. 2, besides those absconded, as amongst the rioters, and Doonda Singh as the person who had cut him down with a sword. "He had a severe wound on the back about eight inches long, commencing where the neck joins the trunk extending downwards and inwards obliquely towards the spine between the ribs and shoulder blades. Also another smaller wound about three inches long just below the first. Both wounds were of an incised nature and must have been inflicted by a sharp-cutting instrument." The *post mortem* shewed that "the wound had penetrated into the cavity of the chest completely dividing four of the upper ribs near the spine. The wounds must have been inflicted with a great deal of violence. Dr. Diaper was also of opinion that "both these wounds were inflicted on the deceased when he was stooping." Lock-jaw supervened on 8th February last, and he died in hospital on 11th following.

Witness No. 8, Dr. Diaper,
4, Rajoo Singh,
6, Durshunlal,
7, Sobrum Muhto.

Purbhoo (prisoner No. 1,) and Dirpnath (prisoner No. 2,) delivered themselves up to the officiating deputy magistrate of Shergotty on 8th and 14th of February last.

Bishoodharee (prisoner No. 3,) and Uddhean Singh, prisoner No. 4, were apprehended by the police on 22nd and 26th idem. The prisoners either originally before the deputy magistrate or the police pleaded simply *not guilty*, each setting up *alibis* and summoning numerous witnesses in support of them. Before this court, however, assisted by counsel, they comment on the evidence for the prosecution, and for the first time, alleged that the prosecutors must have murdered the deceased, their slave, in order to entangle the whole household in trouble. Dirpnath Singh also pleaded, that he had been originally released under the deputy magistrate's orders of 6th February last, and Purbhoo argues, that if it had been their intention to commit murder, they would have killed the masters, instead of the slave, and thus have got rid of all disputes. A host of witnesses, summoned by the prisoners before this court, Nos. 9 to 41 inclusive depose in favor of their respective *alibis*.

The *futwa* of the law officer, convicts Purbhoo, prisoner No. 1, Dirpnath prisoner No. 2, and Uddhean Singh, prisoner No. 4, as accomplices in a riot attended with the wilful murder of the deceased, and the wounding of Nunkoo and Hurgeanee Singh prosecutors, and declares them liable to discretionary punishment by *akoobut;* but taking into consideration Bishoondharee's great age, about eighty years old, consequent debility, and the impossibility of his having taken any very active part in the riot, acquits him.

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The murder of a slave or retainer in order to implicate others, though not unknown, and instances are within my own experience, yet seems beyond all probability in the present case. It is a wild, unsupported, reckless assertion, made by the prisoners at the last moment. It was never alluded to by them in their original defences either before the police or deputy magistrate. Dirpnath Singh and Purbhoo Singh voluntarily appeared before the deputy magistrate on 6th and 8th February last, whilst the deceased was still alive, and the other two after his death. They also filed two petitions, one by Purbhoo on 9th February, No. 24, and a joint one by all four prisoners on 9th March, following No. 131, which were equally silent on the subject. Further the miscreants who can contrive such a crime are equal to doing it effectually, on the principle that dead men tell no tales, and though Europeans can form little idea, what slaves and retainers in this country will endure for their employers' sakes, yet it is impossible to suppose, that the deceased lingering under a wound which penetrated "into the cavity of the chest, completely dividing four of the upper ribs near the spine" would, in such a dangerous state, have deposed as consistently as he did before the police on 30th January last, and the deputy magistrate on 2nd February following, and continuing in his senses up to the 8th idem, without having given utterance to what really did happen. The deceased had two sword wounds, one just below the other. The probabilities are the least severe one was struck first, and though I can understand a slave submitting to one blow, the object in such case being only partial injury, and for the sake of the argument, as in the deceased's instance, evidenced by his not being killed on the spot, I cannot credit his yielding to a second and fatal one, under which his sufferings from the first must have been acute, without under such circumstances having exposed the treachery which in that case would have thus wantonly risked his life. On the other hand, the state of the deceased's wounds is in thorough agreement with all the particulars of the case, consistently narrated by the prosecution from first to last and stands further confirmed by Dr. Diaper's opinion "that the wounds were inflicted upon the man when he was stooping." The prisoners had an object in taking their own law with the prosecutors, and in oppressing them by plunder. This influential class of people have endless ways direct and indirect of punishing each other both within and without our courts. The deceased daring to stoop down and push away the plunderer's baskets in the act of plundering his master's grain, and being only a poor retainer was ruthlessly cut down, whilst, the two Rajpoot prosecutors, the rioters' own kin, were allowed to escape with slight personal injuries, not, as the prisoner Purbhoo cunningly argues, with opportunity to get rid of them, allowed to pass by, but because grievances and riot quite reached that pitch between

them, as would have supported a Rajpoot brotherhood in murdering one another, whilst the life of a menial venturing to oppose the ends of their violence counted as nothing. I regard this as the real state of the case, and the act thus mercilessly taken was done in the pursuit of riotous violence, secretly and deliberately planned and carried out unawares, for which the opportunity must have been well watched, and which the prisoners' vicinage, local influence, and numerous brotherhood amply facilitated, in the sole object of revenging themselves on their interloping and unyielding relatives, the two prosecutors. Had the occurrence in reality been of any other kind, I consider the prisoners, under all the circumstances of the case, could have scarcely failed to have elicited it, or have shaken the testimony of the five eye-witnesses during the cross-examination they subjected them to, neither of which do I observe has been done in the slightest material degree. I therefore find the crime to be a marked one, in which the whole party of rioters must be held answerable, for the inexcusable outrageous violence which caused the deceased's death, as I cannot understand, that the deceased's assailant could even have wounded him, as he did twice, with a sword whilst defenceless in the act of stooping down, and with such extreme violence, as proven by the post mortem, without having intended to endanger his life.

Dirpnath Singh's name, prisoner No. 2, was generally omitted by the witnesses, before the deputy magistrate, but he was named from the first both by Nunkoo Singh and the deceased, and has been recognized by the witnesses before this court as present amongst the rioters. The officiating deputy magistrate's order to which he refers, though a hasty one, was not one of acquittal, vide back of Durshun witness's evidence No. 17. It was issued on 6th February, i. e. before the deceased's death, or completion of the trial, consequent on the prisoner's voluntary attendance and was conditional only for his discharge at that time (*bilfail.*)

I accordingly concur in the law officer's conviction of prisoners Nos. 1, 2 and 4, in the 1st count, which causes this reference. I would sentence prisoner No. 1, Purbhoo to fourteen years' and prisoner No. 2, Dirpnath and prisoner No. 4, Uddhean Singh each to ten years' imprisonment in labor and irons in banishment.

Although it is not unusual for the elders to cheer on their relatives and adherents in riotous acts, and in the present instance the greatest offenders, Futtehnarain and Doonda Singh (absconded), are his own brother and son, and the prisoner Purbhoo another son, and there is just as much reason to credit the evidence for the prosecution that he was present as well as the others, being quite hale enough to accompany them, still his extreme old age must have kept him a spectator, the utmost too deposed to against him, and which in itself would be prohibitory of any

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benefit to be derived from his incarceration from which a medical certificate would as speedily discharge him. The able-bodied men seem alone responsible in such a case, and accordingly in concurrence with the *futwa* he has been released.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, Sir R. Barlow, Bart., and Messrs. H. T. Raikes and B. J. Colvin.)

Mr. A. Dick.—There are four eye-witnesses to the affray, the plunder, and the wounding mortally of the Kahar Bundhoo, besides the deposition of the two prosecutors.

There are, however, several circumstances in this case, which tend to raise a great suspicion on the evidence for the prosecution. The very first witness, the chowkeedar, who reported the occurrence at the thannah, stated that Purshad Singh had wounded Bundhoo, and Doonda Singh struck Geeanee Singh: whereas the evidence of the prosecutor and the other witnesses, and subsequently of himself, prove that Doonda cut down the deceased Bundoo, and Govind wounded Geeanee. His testimony is therefore utterly worthless. The other four eye-witnesses are all ryots and inhabitants of the village of the prosecutors, and their respective testimonies tally to a tittle. They assert that a blind feeble old man of eighty years, who could not move about without support, was present in an affray, and in which 300 persons, most of them armed, had assembled to carry off a thousand maunds of grain! This old man was acquitted by both Mooftee and sessions judge. These witnesses further name every one of the family, whom it was the interest of the prosecutors to disable from opposing their purchase of what was theirs, the accused's inheritance, by thus having them imprisoned and banished, or dispersed as outlaws. On the other hand, one of the principal prisoners Purbhoo, has set up an *alibi* of a peculiar nature, bearing the marks of truth, which the mooftee has discredited on the extraordinary reason, that the witnesses to it, were inhabitants of the very place, where the prisoner wished to prove he himself was at the particular time of the affray! The testimony for the *alibi* is in my opinion in every respect as trustworthy as the evidence for the affray and the carrying off of the grain; indeed more so, as the witnesses are of various castes, whereas in the latter, except the chowkeedar and the wounded Bundhoo they are all Rajpoots. The affray took place on the very day Purbhoo's father-in-law died, and he may well be supposed to have been in distress, and engaged so as not to have heard or been able to notice the accusation against him till six or eight days, when he went forthwith to the deputy magistrate and delivered himself up, setting forth this *alibi* in defence. In addition to all these circumstances against the truth of the evidence for the affray, and the plunder of the grain, I observe a most important omission on the part of the mohurir, who arrived on the spot the very day after the affray, and the plunder of

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the grain, took no measures to enquire into the fact of the carrying off of so much grain, and to ascertain where it had been deposited, and whether it could be recovered and identified, being made up of the crops of two different villages; and it is equally singular that the prosecutors, who were present, and their party, did not attempt to trace the track in which the grain had been borne away; for some of it must have been strewed on the way, carried off in such a hurry in baskets, and repeatedly. This remarkable omission to trace and recover the plunder is unnoticed by both the deputy magistrate and the sessions judge, and indeed has been totally over-looked by all parties throughout the case. A proper enquiry into the allegation would have led to the most beneficial results. Its truth would have indubitably established the fact of the affray and the plunder, and thus of the wounding, and on the contrary, a failure after a careful attempt to trace the track, and to ascertain where the grain had been stored, would have been tantamount to a disproval of the accusation. Looking then to the animus which manifestly predominated in the breasts of the prosecutors against the accused, to the accusation including all who were nearly interested in opposing their purchase, to all the witnesses being their own ryots, and to the utter want of proof of the fact of the plunder of so large a quantity of grain, I cannot feel that confidence in the evidence for the truth of the charges, that would warrant a sentence of conviction. I would therefore declare the charges not proven and release the prisoners.

Mr. B. J. Colvin.—I concur with the sessions judge and law officer in convicting the prisoners. The ground of defence taken up by Purbhoo Singh, only for the first time in the sessions court, that the deceased was wounded by the prosecuting party in order that the prisoners might be accused, is quite untenable. If true, it would have been urged from the first. On the other hand the case was reported by the prosecutors as soon as it occurred, and enquiry made without delay; the wounded man deposing twice, i. e. before the police and deputy magistrate, how and by whom he was wounded. No reason is assigned too, why the witnesses for the prosecution should have given false evidence, if the charge had been fabricated, as attempted to be shewn by the counsel for the prisoners, Mr. Waller. He has argued upon the improbability of 1000 maunds of grain being carried away by a party of the strength of the attacking party, variously stated at from 150 to 300 people, and upon the fact of the grain not having been afterwards traced. The police certainly did not enquire into this part of the case, although it formed part of the charge, as first stated by the chowkeedar, who reported the matter, but the prosecutors seem to have limited themselves subsequently to seeking redress for the per-

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sonal injuries they had received; and neither the police nor deputy magistrate apparently thought it necessary to trace the grain, although inquiry into its disposal would have been very useful.

The evidence for that part of the defence of Purbhoo respecting his *alibi* has been read at the request of Mr. Waller, who did not wish to have any read as regards the other prisoners. It certainly corroborates that defence, but I do not attach the same weight to it that I do to the evidence for the prosecution, because the prisoner says he only heard of the charge against him on the 6th February, but if he were, where he wishes it to be believed he was, the witness, Choonee chowkeedar, to whom he says he gave instructions to look after his house, would have let him know the charge against him, when it is to be supposed he would have appeared as readily as he says he did when he heard of it; moreover the circumstance that all those accused were absent when the police came, and none of those tried were apprehended or delivered themselves up for more than a week afterwards, while many of the others are still at large, goes to prove a consciousness of guilt.

The deceased, however, met his death, not at the hands of any of the present prisoners, but at those of Doonda, absconded, and there is nothing to shew that they intended any such fatal results as followed; I would therefore reduce the period of imprisonment from fourteen to seven years in the case of Purbhoo, and from ten to five years in the case of Dirpnath and Uddhean, with labor and irons in banishment.

Sir R. Barlow.—Bundhoo, shortly before his death, named the prisoners Nos. 1 and 2, as being present when he was cut down by Doonda Singh, not yet apprehended. The eye-witnesses in the calendar also named them and the prisoner No. 4, with others absent. The police have made no report on the subject of the plunder of the grain, but there can be no doubt of the death of Bundhoo, for the prisoners themselves allude to the fact of his being wounded, in the sessions court, and the medical officer reports his death of lock-jaw on the 11th February, and it is then, that the prisoners for the first time charge the plaintiffs with having wounded their own servant in order to get them into trouble. There may be some exaggeration in the plaintiff's story as to the quantity of grain carried off, but the fact of Bundhoo's death and the attack by a large body of armed men with baskets to plunder the prosecutor's house, is clearly proved to my satisfaction. No opposition was made on the part of the prosecutor. The prisoners evidently came prepared for the occasion.

The sessions judge has sentenced the prisoners to fourteen and ten years respectively. This is not in my opinion more than sufficient punishment for the offence of which they are proved

guilty, I would sentence them accordingly. The case must go on to another voice.

Since writing the above I find from the sessions judge's letter No. 117 that Dirpnath Singh No. 2, has died, his name must be struck out of the proceeding.

Mr. H. T. Raikes.—I concur with Mr. Colvin and Sir R. Barlow, that the evidence is sufficient for the conviction of Purbhoo Singh No. 1, and Uddhean Singh No. 4, and would sentence them as proposed by Sir R. Barlow, to fourteen and ten years respectively.

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PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

GOVERNMENT,

versus

BHOWNAUTH SINGH BABUN (No. 2,) BISHNAUTH SINGH BABUN (No. 3,) AHEEBURN SINGH BABUN (No. 4,) BUKHOREE SINGH BABUN (No. 5,) BHORAWUL* SINGH BABUN (No. 6,) PURSHUN* SINGH RUJPOOT (No. 7,) LOCHUN SINGH RUJPOOT (No. 8,) AND GUJADHUR KOORMEE (No. 9.)

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CRIME CHARGED.—Nos. 2 to 9, 1st count, affray attended with culpable homicide of Munbodh Koormee and with severe beating and wounding of Luchun Roy, Gujadhur Koormee on one side, Aheeburn Singh on the other side; 2nd count, No. 2, causing the above affray.

CRIME ESTABLISHED.—1st count, Nos. 3, 4, 5, 8 and 9, affray attended with culpable homicide of Munbodh Koormee and with severe beating and wounding of Luchun Roy, Gujadhur Koormee on one side, Aheeburn Singh on the other side; 2nd count, No. 2, causing the above affray.

Committing Officer.—Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 15th May, 1854.

Conviction and sentence passed by the sessions judge on a charge of affray attended with culpable homicide and wounding, reversed in appeal owing to the unsatisfactory nature of the evidence, and the collusion and misconduct of the police.

Remarks by the sessions judge.—The estate of Purrarra belonging to Bhownauth Singh prisoner No. 2, and that of Koodowha, an eight and a half annas share of which is leased to Moonshee Ameer Allee, are bounded by a large reservoir called Beygee, a certain right of water from which is possessed by each estate under an old decree of court. Aheeburn Singh, prisoner No. 4, is said to have been guarding the water on behalf of Purrarra, and Munbodh Koormee the deceased, Luchun

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Singh, prisoner No. 8, and Gujadhur, prisoner No. 9, on behalf of Koodowha.

The Purrarra version of the occurrence is, that on the morning of 23rd August last, whilst Aheeburn was guarding the reservoir, Moonshee Ameer Allee, who has hitherto evaded arrest, accompanied by a large band of armed followers commenced cutting the bank of the reservoir and on his remonstrating he was cut down, under Moonshee Ameer's orders, by Sheosuhaie and Lallbeharee Singh absconded.

Witness No. 7, Uchraj Singh Babun.
" " 8, Rambeet Singh Babun.
" " 9, Surnam Singh Rujpoot.
" " 10, Hetun Singh Babun.

On the other side that of Koodowha is, that Munbodh Koormee deceased, Luchun Singh and Gujadhur Koormee were watching the flow of water out of the Beygee reservoir, through the Koodowha inlet, when the Purrarra party headed by Bhownauth Singh accompanied by prisoners Nos. 3 to 7 and others his connections and adherents, absconded, closed the inlet and thus shut off the water. Munbodh Koormee, Luchun Singh and Gujadhur Koormee remonstrated, as well as the mohurrir and burkundazes of the thannah, who about that time, acting on information given by Moonshee Ameer's side the day before, had reached the spot when, on Bhownauth's orders, Munbodh received a severe sword wound at Heera Singh's hands, besides slight ones by Bishnauth Singh, prisoner No. 3, and others absconded, Luchun Singh and Gujadhur Koormee were slightly beaten with clubs, or armed sticks, the former by Gopal Pandey and others absconded, and the latter by Bukhoree Singh, prisoner No. 5, and others absconded. On this the rioters on both sides dispersed. The remaining prisoners not above named stand recognized as having been present in the affray.

Witness No. 1, Bujoolall Kaeth.
" " 2, Ram Singh Babun.
" " 3, Jamath Singh Babun.
" " 4, Kewul lall Kaeth.
" " 5, Oochee Singh Babun.
" " 6, Sheikh Soopun.

Whilst the Koodowha wounded were taken care of on the spot itself by the police, Aheeburn appeared at the thannah of his own accord the same day, the 23rd, shewing sword wounds on his person, and declaring that Moonshee Ameer himself had wounded him; which one day intervening on 25th idem, he denied before the magistrate stating it to be a concoction by the police in collusion with Moonshee Ameer, and instead, repeated the statement above shown as deposed to by the Purrarra witnesses.

Exclusive of slight wounds, the severe mortal wound of which Munbodh died on the 7th September following, was a severe incised wound upon right side of back, penetrating obliquely

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Witness No. 19, Dr. Diaper.

downwards between right blade bone and ribs. Two of which it completely severed and opening into the cavity of the chest. Luchun Singh had a severe incised wound at the back of his head. Gujadhur Koormee three trifling contused wounds, and Aheeburn Singh a superficial incised crucial wound, about three inches long either way over the left blade bone, which, as it penetrated to the blade bone, Dr. Diaper thinks prevented its going deeper.

Witness No. 19, Dr. Diaper.
" " 15, Domun Hulwae.
" " 16, Jeobodh Hulwae.
" " 17, Sheodial Noneear,
" " 18, Heeramun Putwa.

Bhownauth Singh, prisoner No. 2, accusing Moonshee Ameer of having maliciously and violently cut the Beygee embankment contra to the decree of 1809, with the sole object of persecution in furtherance of his designs for extending his personal influence, which as an adventurer of late years (originally notorious as late sheristadar of the collectorate of this district) he had succeeded in doing almost throughout the purgunnah, set up an *alibi*, as did all the remaining prisoners on his side, exclusive of Aheeburn, and in support of which they called numerous witnesses. Aheeburn, Luchun Singh and Gujadhur Koormee pleaded as already shewn, naming fresh witnesses in addition to those first examined.

The *futwa* of the law officer, releasing Bhorawul prisoner No. 6, and Purshun Singh, prisoner No. 7, convicts the remaining prisoners exclusive of Bhownauth Singh, prisoner No. 2, on the 1st count, Bishnauth, prisoner No. 3, as liable to punishment for the price of blood by *deyhut;* Bukhoree Singh, prisoner No. 5, to discretionary punishment by *akoobut;* Aheeburn Singh, prisoner No. 4, Luchun Singh, prisoner No. 8, and Gujadhur Koormee, prisoner No. 9, to discretionary punishment by *tazeer* and Bhownauth Singh, prisoner No. 2, on the 2nd count as liable to discretionary punishment by *tazeer*.

I generally agree in this finding, there is no particular evidence against prisoners Nos. 6 and 7, beyond their having been present in the affray as was most probably the case with all the witnesses on both sides. The evidence to the affray is of the unsatisfactory character usual to such cases, in which great local influence and interests are concerned on both sides, and disinterested testimony becomes impossible. In each instance the witnesses support the story of its own side, even going the length either of being ignorant of or wildly asserting the opposite party's wounds to have been self-inflicted, whilst each at the same time screen their leaders in an occurrence, which there is much reason to believe could not have taken place in their absence. But of the affray itself there can be no doubt, or that the wounded men came by

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their wounds in any other way than in the affray itself. The marks on their persons bespeak their having all joined in the conflict. Munbodh had a wound on his left index finger, and his right hand was much bruised. Luchun Singh one on the back of his head. Gujadhur marks on his left elbow and left hand and Aheeburn on his left thumb. The assailants on each side have always been consistently named by the witnesses on each side from the first, and the only exception in this respect is Aheeburn's statement before the police, which there is every reason to suspect the police of having fabricated in collusion with the Koodowha side with the cunning design of forestalling, or mystifying any statement that might be subsequently advanced by the Purrarra party. It will be observed that the Koodowha side, aided by counsel* before this court eagerly adopt it, as a genuine statement. Whereas apart from Aheeburn's denial of it before the magistrate, one day only intervening, I find that the thannah statement contains in itself internal evidence of its own spuriousness. Aheeburn is therein recorded as having said that Moonshee Ameer was in a palkee, whilst his witnesses have always deposed that he was on an elephant. He therein calls Uchurj Singh, (No. 7,) Surnam Singh, (No. 9,) and Hetun Singh, (No. 10,) his fellow-servants, whereas they are residents of different villages and describe themselves as mere passers-by on the occasion, which has not been materially shaken under examination or disproved by the Koodowha party. The magistrate is of opinion, in which I quite agree with him, that the police did attempt to collude with Moonshee Ameer's side and he therefore declined entering the mohurrir and burkundazes' (suspended) names in the calendar as eye-witnesses. Indeed the real merits of the case were only fully elicited by Mr. Assistant Brodhurst's local investigation, from which, ending in the Act IV. of 1840 decision, in favor of the Purrarra proprietor and confirmed by me in appeal simultaneously with the present trial, I ascertain that the Beygee reservoir is of some extent. Its water area is towards Purrarra and its embankment towards Koodowha. The latter therefore is necessarily on the lower level of the two; and the complete preservation of the embankment of the reservior, under such circumstance, is essential to Purrarra's deriving any benefit whatever from its water, which is thereby alone dammed up, so as to be of any use to Purrarra; Purrarra's title to this water is fully confirmed by the decree of court dated 26th July, 1809, and another which followed for damages in 1825, against the Koodowha proprietor, who interfering with a subsidiary land, some distance off to the northward of the place of the present occurrence, had prevented the water of the reservoir running in the direction of the Purrarra property. The decree also refers to Goroolall Ameen's report and map on the occasion, which plainly describe Purrarra as having a right to dam up and carry off the

Beygee water, as Koodowha equally held that of opening or shutting its southern inlet either for admission, or stoppage of its water. The Koodowha party assert they were only exercising their right of opening this inlet, but this is a barefaced pretence. The circumstances thus detailed unquestionably indicate that Koodowha could have no right to any thing but surplusage water running off after the reservoir had become full, or the very object of the embankment itself in favor of Purrarra would be defeated; Goroolall's map shews the Koodowha inlet close to the southern end of the embankment as usual, for it would necessarily endanger the safety of any embankment to make a passage for water through it, by cutting it any where, where at all high. Yet Mr. Brodhurst* found the embankment cut at some two *russees* distant from its southern end, and to the depth of about one fathom more or less as amply acknowledged by the witnesses† on both sides, some of whom describe the quantity of water thus carried off by this daring outrage as about three-fourths of the contents of the Beygee reservoir, thus rendering it, under the facts already shewn, to all practical purposes utterly useless to Purrarra, as it equally could not have been of any particular value to Koodowha in any such large volumes as must have poured out through a cut of such a depth. These results confirm Bhownath Singh prisoner No. 2's statement, and Deoonath‡ witness No. 25's, evidence regarding the malevolence of this outrageous act, which under such circumstances could have had no other origin. There is no more fertile source of persecution between mofussil landholders than these easily infringed water rights, which dishonesty can at all times more easily turn to greater immediate mischief than is ordinarily practicable in any other way. The discovery of the wrong-doers in such cases is always desirable. I quite agree with the magistrate and his assistant that the Koodowha party are the wilful aggressors on the present occasion, and had the Purrarra party used less violence, they would scarcely have been culpable in defending their plain rights under so great provocation. Bhownath Singh, prisoner No. 2, is described as having headed his party on horseback, which Mr. Assistant Brodhurst considers he was incapable of doing, but Dr. Diaper is of opinion that he is in no way physically incapacitated in such respect. The evidence is as strong against him, as against any of the other prisoners. His *alibi* equally with the other I regard as got up for the occasion, and has been considerably shaken or exposed by the Koodowha cross

* Mr. Brodhurst's proceeding and explanation to this court, dated 3rd May.

† Evidence of witnesses on both sides before this court on the 3rd May, witness No. 25, Deoonath Singh.

‡ One of the most respectable and disinterested witness who appeared during the investigation before Mr. Brodhurst and which his bearing before this court fully upheld.

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examination, at the same time always excepting the partisan character of the evidence on each side, I find no reason to reject it as regards the material acts of violence committed by both sides. Under the foregoing view the prisoners have been sentenced as within.

Sentence passed by the lower court.—No. 2 to be imprisoned without irons for three years and to pay a fine of 500 Rs. No. 3, for two years and to pay a fine of 200 Rs. Nos. 4 and 5, for two years and to pay a fine of 50 Rs. each, all payable within one month or in default of payment to labor until the fine be paid or term of sentence expire, and Nos. 8 and 9, with labor and irons for five years each from the 15th May, 1854.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) This case is one of considerable difficulty. No doubt an affray took place between Ameer Allee's party and that of Bhownauth Singh, in which Munbodh was killed and others wounded, but owing to the conduct of the police officers, who were deputed to prevent any breach of the peace and the absence of any control over the parties, they have been enabled to prepare evidence exactly as they might wish, and certain witnesses each inculpating, as tutored, the opponent's party, have been adduced.

Of these eye-witnesses several brought forward by the proprietor of Kodawoh, Ameer Allee, have sworn to the presence of Bhownauth Singh on horseback; and to that of Bishnauth Singh, whom they all charge with having actually cut down Munbodh the deceased. Before the police they said nothing of Bhownauth being on horseback and ordering the assault. Had they seen him leading, as alleged, a band of four hundred men thus conspicuously, no doubt they would at once have stated the fact before the police. The assistant magistrate, who was deputed to make an enquiry on the spot, discredits altogether the personal presence of the prisoner Bhownauth on the spot, and the independent witnesses examined are unable to say more than that they heard an affray had taken place.

Prisoner No. 4, is alleged to have been wounded, and Nos. 3 and 5, on part of Bhownauth, also, are convicted by the sessions judge on the evidence of the same witnesses as Bhownauth. These witnesses are all residents and ryots of Kodawoh. From the medical report it is by no means satisfactorily shewn that the wounds, on the person of prisoner No. 4, Aheeburn, were inflicted in the mode described, and if the statements of those who depose to his having been cut down in the affray by Sheosahaiee and Lallbeharee Singh be compared, the discrepancies in them are too great to justify the conclusion that *they* inflicted the wounds, and considerable doubt remains as to how, and when, and by whom they were inflicted. The medical report justifies to a certain extent these doubts and leads to an impression that

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the allegation made by Ameer Allee's party that the wounds were self-inflicted is not without foundation. The prisoners Nos. 3 and 5, Bishnauth Singh and Bukhoree Singh have throughout been named by Ameer Allee's witnesses, but for the reason above given it would not be safe to convict the prisoners upon their evidence; prisoners Nos. 6 and 7, Bhowail Singh and Persaud Singh, against whom the same evidence was adduced, have been released by the sessions judge.

Prisoners Nos. 8 and 9, on the part of Ameer Allee and both of them wounded, were not named by any of the witnesses in the calendar; they appear to have been convicted upon the fact of their having been wounded on the occasion of the affray, this is no doubt strong evidence against them if *mutual* affray had been proved, and it were at the same time established by the evidence on the record that they were actively engaged in it; but no such evidence as against *them* is brought, whilst they plead that they were attacked and wounded by Bhownauth's people. Looking at the circumstances of the case we can only attribute the failure to bring home the offence to the guilty parties, to the misconduct of the police mohurir and the five burkundazes who were deputed to keep the peace and were on the spot, but who so far from aiding, as in duty bound, to preserve it, have, in consequence of their collusion with one of the parties, been struck off the list of witnesses for the prosecution and been called upon for their defence. Their impartial evidence would have been of the greatest importance. We cannot uphold the conviction of the sessions judge, whose sentence is reversed, the prisoners must be released.

PRESENT:

A. DICK, AND J. DUNBAR, ESQS., *Judges.*

MUSST. KOWSOOLLAH AND GOVERNMENT,

versus

LEYBA CHUNG.

Mymensingh.

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Case of LEYBA CHUNG.

CRIME CHARGED.—Wilful murder of Boydo Chung.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 15th June, 1854.

Remarks by the sessions judge.—It appears from the deposition of the prisoner's and deceased's wives, taken at the thannah,* and the prisoner's admission throughout, that the deceased and

Prisoner convicted of murder, and sentenced to im-

* They were not examined before the magistrate or sent to the sessions on account of ill-health.

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prisonment for life in transportation; in consideration of the existence of great provocation inciting to the attack and the prisoner's previous refraining from taking vengeance.

his wife had come to reside, (being of the same caste) at the prisoner's uncle's* house, where the prisoner also resides, about a year ago, and used to earn their livelihood by weaving cloth; that deceased was of loose character and was suspected of having made, about two months before the occurrence, some improper advances to the prisoner's wife, a young woman of about, according to her own account, fifteen or sixteen years of age. She stated at the thannah, that on three occasions, deceased had entered her house at night for some evil purpose, and in one instance her husband, having become aware of his entrance, ran after him. This created ill feeling between the parties and enmity in the mind of the prisoner. From the evidence of the witnesses,† it further appears, that on the day of occurrence, the deceased was employed in weaving cloth in an out house, when the prisoner approached him from behind with a *kooralee* and struck him three blows on his head, which immediately stunned him, and he was seen by the witnesses running with the weapon inside the house; witness No. 10, (prisoner's uncle) immediately came up on hearing of the uproar from an adjoining field, where he was ploughing, and carried deceased to another house and began to apply medicine, while the prisoner was secured by witness No. 11, and he stated before all the parties‡ assembled, that the reason of his assaulting the deceased was, because he had disgraced him by attempting to violate the chastity of his wife.

* Witness No. 10, Radhoo Chung.

† No. 8, Asharam Chung.
,, 9, Dosorut Chung.

‡ Witnesses Nos. 8 to 15, inclusive.

The deceased was then insensible, but when he came to his senses he declined to be carried to the thannah, and died on Wednesday, the third day after the assault; and the civil surgeon who examined the corpse, deposed that he found death to have been caused by three incised wounds on the head about two inches in length each, with a fracture of the skull beneath each wound, which must have been produced by blows of some heavy cutting instrument, such as a *kooralee;* that any of the wounds was sufficient to cause death; that though the man might survive a few days, such injuries are generally followed by immediate death, and that even if immediately attended to, the man could not have lived with three such wounds on the head.

The prisoner admitted at the thannah having assaulted the deceased, in the manner above described, as about eight or nine days before the occurrence, deceased had entered his house at night for an evil purpose, when be immediately awoke and chased him out of the house, reproaching him for his ingratitude and abuse of hospitality, but that the deceased did not refrain from making improper advances to his wife; that he therefore in a fit of jealousy struck him three blows on his head with the *kooralee,*

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in the day charged as he was weaving cloth. Before the magistrate, he repeated his confession and admitted what he stated before the police, adding that when he found the deceased entering his house he chased him and desired him to leave it, and that he only struck him one blow on the head, after which he (deceased) himself walked to another house, and that he died from the effects of the injury he received. In this court the prisoner, though he said he did not remember what he stated in the mofussil and before the magistrate, admitted having struck the deceased on the head one blow with the back of the *kooralee*, because the deceased had on a previous occasion entered his house and on the day charged, his wife went to bring some fresh earth to plaster her house with, from the back part of the house, where deceased was weaving cloth, when he (deceased) caught her and pulled her into the ditch for the purpose of violating her, and in a fit of jealousy, he struck him, but that he died from asthma and not from the effects of the assault.

The witnesses for the prosecution deny all knowledge of the existence of previous intrigue between the prisoner's wife and the deceased, and the witnesses for the defence did not support the prisoner's statement that the deceased died of asthma.

The *futwa* of the law officer convicts the prisoner of the wilful murder of deceased, and declares him liable to the penalty of death by *kissas*. I concurred in this verdict, but taking into consideration the provocation the prisoner received at the hands of the deceased, in his repeated attempts to injure his wife, I think it will be sufficient for the ends of justice that a sentence of imprisonment for life, with labor and irons, in transportation beyond sea, instead of capital punishment, be passed on the prisoner, which I beg to recommend.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and J. Dunbar.) It appears, from the evidence of two eyewitnesses, that prisoner with a *kooralee* (an axe) struck the deceased three blows, while he was sitting at work weaving, and fractured his skull; so that he died three days after. It further appears, that the prisoner was immediately apprehended on the spot, and instantly gave his reason for the attack, viz., the repeated attempts of the prisoner to violate his wife; and adding that he had detected him in one of the attempts, chased him, and abusing him for his ingratitude for the hospitality extended to him, desired him to leave his house. This statement was corroborated by both the prisoner's wife, and by the widow of the deceased. We therefore convict the prisoner of murder, and in consideration of the provocation, and his previous desisting from taking revenge, sentence him, as recommended by the sessions judge, to imprisonment for life in transportation.

PRESENT:
A. DICK, AND J. DUNBAR, ESQS., *Judges.*

East Burdwan.

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Case of RAJCHUNDER BAGDEE.

Prisoner convicted of dacoity and sentenced by the sessions judge to fourteen years' imprisonment in banishment. Appeal rejected.

GOVERNMENT AND DEGUMBER ROY,
versus
RAJCHUNDER BAGDEE.

CRIME CHARGED.—Dacoity at the shop of the prosecutor Degumber Roy, in which property to the value of Rs. 8-14-0 was plundered; 2nd count, knowingly having in his possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 10th May, 1854.

Remarks by the officiating additional sessions judge.—The prosecutor is a petty merchant and had locked up his shop and gone home about 10 P. M. At midnight, or a little after, the shop was attacked by dacoits and broken into. The chowkeedars and villagers assembled in great numbers and so hampered and molested the robbers that they left the premises almost immediately. One of the gang however was observed to quit the house a little after the rest with a load on his shoulder. He was assailed by some of the chowkeedars and wounded. Throwing down his bundle he attempted to get over a low wall to effect his escape, but he was hotly pursued by the chowkeedars and secured. This person was the prisoner and the things he was carrying off was all the property the dacoits had secured. The prisoner denies the charge and accuses the prosecutor with having had him arrested unlawfully and without cause, but of this plea he adduces no proof. The two persons examined on his behalf, deny all knowledge of the facts pleaded. The prisoner is proved to be a man of bad character and convicted and sentenced on a former occasion.

Sentence passed by the lower court.—To be imprisoned with labor and irons in banishment for fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) We see no reason for interference. The prisoner's, petitioner's, defence is utterly incredible and unsubstantiated: and his apprehension, while running off with the plunder, fully established.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

MUDDOOSUDUN MITTER AND GOVERNMENT,

versus

MEHIR CHAND BORAI.

Moorsheda-bad.

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Case of MEHIR CHAND BORAI.

CRIME CHARGED.—1st count, culpable homicide of Purreshnath Mitter, brother to the prosecutor; 2nd count, accessaryship to the fact.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 30th June, 1854.

The prisoner who had evaded justice was on apprehension convicted, as he had been named from the first as a chief party in the attack on deceased.

Remarks by the sessions judge.—The prisoner pleaded *not guilty*.

The prisoner was implicated in the case, the particulars of which have been fully detailed in my letters Nos. 248 and 254, dated respectively 28th September and 1st October, 1853, and in which the prisoners therein alluded to were convicted and punished by the Nizamut Adawlut, on the 20th and 22nd October, 1853. The prisoner evaded arrest at the time and was not apprehended till the 16th May, 1854.

I gave my opinion of this case at length in the letters above alluded to, convicting the other prisoners as accomplices in the murder of Purreshnath Mitter, on the grounds of a *malus animus* in some of them towards the deceased, of their having been seen to hurl him down to the house of Jadoo Singh, where he met with his death at their hands by blows inflicted on his person, of there being seen some of them with *lethal* weapons in their hands, and of their propping the body up, after they had killed the deceased, and suspending it by the neck to induce the suspicion that he had hung himself. But as the superior Court took a different view and convicted the other prisoners of culpable homicide, the magistrate has committed the prisoner on the lesser charge and from the evidence of the witnesses,* I have convicted him as an accomplice in the same.

The evidence of the witnesses† for the defence affords no exculpation.

* No. 1, Mohanund Mundle.
,, 2, Moteeram Mundle.
,, 3, Shadoo Churn alias Laj Churn.
,, 4, Nobin Doss.
,, 5, Jadoo Singh.

† ,, 9, Bhyaram Chowdree.
,, 10, Cossim Allee.
,, 11, Ezajnge Sheikh.
,, 12, Geebun Ghose.
,, 13, Lalu Sepahee.

The law officer, who sat on the trial with me, declared in his *futwa* that there was strong presumption of the prisoner being

1854. an accomplice in the culpable homicide of the deceased, and is therefore liable to *tazeer*.

July 21. Agreeing with the *futwa* I recommend the punishment which was inflicted by the Nizamut Adawlut on the other prisoners, viz. ten years' imprisonment with labor in irons.

Case of MEHIR CHAND BORAI.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The particulars of this case will be found recorded in the trial of Gobind Ghose and another, referred to this Court with the sessions judge's letter No. 248, of the 28th September, 1853, and in which orders were passed by the presiding judges on the 20th October, 1853.

At that time the prisoner, now before the Court, had eluded apprehension and was only taken on the 16th of May last. The evidence against him is direct and conclusive, he was named by the eye-witnesses from the first as aiding and abetting in the maltreatment, resulting in the death of Purreshnath Mitter. We concur with the sessions judge in convicting the prisoner as an accomplice in culpable homicide and sentence him to ten years' imprisonment with labor in irons.

PRESENT:

A. DICK, AND J. DUNBAR, ESQS., *Judges*.

GOVERNMENT AND FUQEER CHAND KOUR,

versus

SRIMUNTO HAREE.

Hooghly.

1854.

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Case of SRIMUNTO HAREE.

Conviction and sentence in a case of dacoity upheld in appeal.

CRIME CHARGED.—Committing a dacoity on the night of the 1st February, 1854 in the house of Faqueer Chand Kour, the prosecutor, and plundering therefrom property to the amount of Rs. 176-11-0, viz. 40 rupees in cash, 109-12-0, in gold and silver ornaments, cloth 17-12-0, brass household utensils 9-3-0.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 4th April, 1854.

Remarks by the officiating additional sessions judge.—A gang of dacoits attacked the prosecutor's house about 2 A. M. on the night of the 1st February, the door of the room he occupied was forced and 4 or 5 persons entered with a lighted torch. They began to beat him and, after plundering the apartment, proceeded to an adjoining one occupied by his mother. The door of this room resisted the efforts of the robbers, and they only effected an entrance by digging on one side of the door-post and causing an aperture large enough to admit the arm.

By this means the bolt was unfastened from within, and the gang entering broke open boxes and *patarehs* and rifled them of their contents. As they left the premises, the prisoner and another released by this court were recognised by the prosecutor by torch light. The witnesses, Nos. 1 and 2, also identified the prisoner during the dacoity. The rest of the witnesses for the prosecution prove, some the dacoity and some the mofussil and foujdary confessions of the prisoner. These are clear and consistent and amount to actual participation in the dacoity. The prisoner pleads guilty before this court and believing this to be his first offence, and in consideration of his youth, I pass a sentence more lenient than is my wont in convictions of dacoity

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Case of SRIMUNTO HAREE.

Sentence passed by the lower court.—To be imprisoned with labor and irons for eight (8) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and J. Dunbar.) The prisoner petitioner was recognized; and he confessed being present at the dacoity, even before the sessions court. We therefore see no reason for interference with the sentence passed on him.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

MR. J. BRODERICK, AND GOVERNMENT,

versus

GUNGA GOBINDO CHUNDER, (No. 1,) ESHUR CHUNDER CHUNDER, (No. 2,) MOHESH CHUNDER GHOSE, (No. 3,) CHUNDER GHOSE, (No. 4,) RAM CHUNDER GHOSE, (No. 5,) BHOOBUN GHOSE (No. 6,) BHUGOBAN GHOSE, (No. 7,) CHAND SHEIKH, (No. 8,) RAM CHUNDER GHOSE 2ND (No. 9,) PANCHKOWREE SHEIKH, (No. 10,) AND MOOLOOK CHAND SHEIKH, (No. 11.)

Nuddea.

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Case of GUNGA GOBIND CHUNDER and others.

Prisoners convicted by

CRIME CHARGED.—Riot and incendiarism of hay valued at 1,600 rupees.

CRIME ESTABLISHED.—Incendiarism in burning stacks of hay valued at 1,600 rupees.

Committing Officer.- Mr. J. E. S. Lillie, magistrate of Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea on the 22nd May, 1854.

Remarks by the officiating additional sessions judge.—This is a very gross case of wilful and mischievous destruction of valu-

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Case of GUNGA GOBIND CHUNDER and others.

the sessions judge of incendiarism acquitted in appeal, the evidence to the recognition of the prisoners by the alleged eye-witnesses having been brought forward several days after the event.

able property from malicious feelings. The prosecutor is a planter in this district and appears to hold some pasture land, which yields him yearly a valuable crop of hay. In the month of January, last, he cut and stacked this hay on the banks of the river, intending to transport it in boats to Calcutta to Messrs. Hunter and Co. Livery stable-keepers. On the night of the 28th of January, this hay was set fire to and burned to the ground. It consisted of several ricks large and small and was valued at about 1,600 Rs. There were four chowkeedars, servants of the prosecutor, in charge of the hay and they give the following account of the affair. A little after midnight the watchmen, stationed on the north side of the ricks, perceived 2 glimmering lights approach from the direction of an old closed factory belonging to Omesh Chunder Rae Taluqdar of Santipore, commonly called Motee Baboo. As these lights advanced a body of some 20 clubmen were observed to follow. The first idea the chowkeedars entertained on seeing the mass approaching was that it was a marriage procession, but they had soon cause to alter their opinion, for as it neared they distinctly heard the party speculating as to the chance of there being any one in charge of the hay, and proposing to secure and bind such before proceeding to fire the ricks. On hearing this the watchmen on the north side ran off and joining their comrades on the south, they all agreed to hide and see the end. Presently the prisoner Gunga Gobind Chunder No. 1, and Ishur Chunder Chunder No. 2, who were clearly the ringleaders, ordered the party to set fire to the hay, when the torchmen, the prisoner Mohesh Ghose No. 3, and another, not taken, applied their burning *mussals*, while the rest of the prisoners stirred up the fire with their *lattees* and communicated it from rick to rick till the whole was in flames. After waiting to see that the mischief was thoroughly done, beyond all power of reparation, the incendiaries gave a shout and went off. As soon as the party had retired, the chowkeedars ran up to the factory and informed the prosecutor, who had the mortification of witnessing the destruction of his valuable property without the power of rescuing any portion of it. The burning was distinctly witnessed by the four chowkeedars in charge of the ricks, and the incendiaries plainly identified by the glare of the conflagration, which is represented as lighting up the country for miles round. The chowkeedar who informed the prosecutor at night mentioned the names of the ringleaders and others, and his written information given at the thannah contained the names of all the prisoners. The cause of the outrage is a long-standing feud between the prosecutor and the said Motee Baboo, and the prisoners are the dependants and servants of the latter. It is evident, that the prosecutor finds the Baboo a powerful and unscrupulous enemy, as in the record of the lower court I see a letter

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from the former to the deputy magistrate of Santipore, praying for the assistance of the police to enable his people to repair to the thannah for the purpose of lodging their complaint on the occasion in question, on the plea that the road was infested with Motee Baboo's people who were resolved to do violence to any party proceeding on such errand. The prisoners pleaded *alibi* in defence, but fail most signally to establish the plea.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five (5) years each.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) In this case eleven prisoners have been convicted of incendiarism, in burning several stacks of hay, valued at 1,600 rupees, on the 28th January last.

It appears from the record that four peadahs, Gholamee, Khas Mahomed, Ghureeboollah and Chonnoo Sheikh, were appointed by the magistrate to attend at the Gungadhurpore factory for the purpose, as stated by Gholamee before the police, of taking charge of some hay, the property of Mr. Broderick, about the 16th April.

On the night of the 18th idem, the four eye-witnesses in the calendar, Gooroochurn Bagdee, Sonatun Bagdee, Bykant Ghose, and Soobratee, Mr. Broderick's own servants, were, they say, on watch over the hay, when they observed a light which gradually approached. They overheard some persons, who are said to be Motee Baboo's people, talking about binding them, they came on and presently set fire to the hay stacks and the witnesses were enabled by the glare of the light to recognize all the prisoners, besides other persons, not yet apprehended.

If all this evidence were worthy of credit, no doubt, the prisoners are guilty and fully deserve the punishment, which has been awarded to them. But we cannot place any reliance upon what they have stated. Gholamee, on the 29th January, that is the day after the conflagration, before the police, said, he and Khas Mahomed were on the spot, where the hay was collected on the bank of the river, for the purpose of guarding it by order of the magistrate, when fifty men armed came and set fire to the stacks and then ran off. Two of the factory people said they were Motee Baboo's people, who had done it through enmity to Mr. Broderick; witness could recognize them.

Khas Mahomed.
Ghureeboollah.
Choonoo Sheikh.

On the 31st January, said before the police that they were in different parts of the factory (which is stated to be half a mile from the river-side where the hay stacks stood) no one of them was present or near the hay stacks; they saw them on fire and were told by Ramdhun Doss and the Chota Sahib, that Motee Baboo's people had done it, they did not see the incendiaries themselves, but heard them. Choonoo alleges, he was with Gholamee in the factory, and Khas Mahomed and Ghuree-

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Case of GUNGA GOBIND CHUNDER and others.

boollah were in the cow-house. Before the magistrate *all* the above four witnesses agree in their statements that they were at the factory, so far however altering what they previously said, as they deny having heard the noise made by the prisoners.

Nothing appears to have been done by the police in the mofussil till the 31st January, when three of the eye-witnesses were examined, Gooroochurn said that he and three eye-witnesses were watching the hay stacks; that no one else was there; and that he recognized all the prisoners; this is entirely opposed to Gholamee's statement.

Bykant and Sonatun, on the 31st January, also before the police named all the prisoners, but they do not mention Gooroochurn and Sobratee as having been with them at the hay stacks, when they were burned.

Sobratee, on the 7th of February, gave similar statements to the police, but he omitted mention of the other three chowkeedars on the spot. These witnesses have all sworn to the several prisoners before the magistrate and the sessions judge. They are all old servants of Mr. Broderick, between whom and Motee Baboo and others long enmity, as they allege, has existed. On cross-examination by the defendant, Motee Baboo, released by the magistrate, Gooroochurn and Sonatun before that officer admitted that as often as cases had arisen in which their master was concerned, *they* had been parties concerned as plaintiff or witness on his part; the other two eye-witnesses also admitted they had frequently given evidence in their master, Mr. Broderick's, favor.

Why these witnesses, who had recognized the prisoners, did *not* mention their names to their master, when they ran to the factory, half a mile distant from the conflagration; or, if they did mention them, why the recognition of persons committing so grave an offence was not made known by them to the police till the 31st January, (the occurrence having taken place on the 28th idem) though the thannah was little more than a *coss* distant from the spot, is not explained. It is true that on the 18*th April*, Mr. Broderick, in his examination before the magistrate, deposed that Gooroochurn named the prisoners, Nos. 1 and 2, as the leaders of the gang, but neither in his letter to the deputy magistrate, of the 30th January, did he allude to that fact, nor did Gooroochurn himself say till he was before the sessions court, on May 20th, that he mentioned their names on the spot to his master whilst, on the 6th of February, before the deputy magistrate he merely said, he told his master that the Baboo's people were the offenders. Another fact, which is very remarkable in the evidence of the eye-witnesses, is, that they depose to having heard Motee Baboo,—who asked to whom the hay belonged as he was en route from Calcutta to Santipore, on being told it was the property of Mr. Broderick,—use threaten-

ing expressions to the effect that he would look after it. This they altogether concealed till the 6th and 10th February, when examined before the deputy magistrate. It was a circumstance of considerable importance to prove that on the very day of the conflagration the then prisoner, Motee Baboo, had so committed himself; nevertheless though four special peadahs had been appointed to guard the hay, all these witnesses, Gooroochurn, Bykant, Sonatun and Sobratee, also servants of the factory, did not communicate during the course of the day to their master the threats used by the Baboo so early as 9 o'clock on the day of the conflagration, before it took place.

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The discrepancies in the evidence above pointed out and the light thrown upon the whole of the case by a more minute search into and comparison of the circumstances set forth, do not, in our judgment, warrant the conviction of the prisoners. We therefore acquit them, and they must be immediately released.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

BEERSADHOO.

Rungpore.

1854.

July 25.

Case of Beersadhoo.

Prisoner charged with burglary and having stolen property in his possession acquitted, owing to the insufficiency of the evidence; misconduct of the police in conducting the

CRIME CHARGED.—1st count, burglary in the house of Hidayutullah and theft therefrom of property valued at Rs. 151-6-0, belonging to the said Hidayutullah and Burkuttullah; 2nd count, receiving and having in his possession property, knowing it to have been obtained by the said burglary.

Committing Officer.—Mr. H. L. Dampier, magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 19th June, 1854.

Remarks by the officiating sessions judge.—On the night of the 28th March last, a burglary was committed in the house of Hidayutullah, witness No. 11, and a number of silver ornaments, &c. carried off. Information was given next day to the police, and on the mohurrir coming out, Hidayutullah stated that he suspected prisoners Beersadhoo and also Shaker and Paguloo, the two latter of whom had formerly lived in his, witness's vil-

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search and taking the prisoners' confession noticed by the sessions judge.

lage, having left it about fifteen or twenty days before and the prisoner having been in the habit of coming to their house. On the 31st, the prisoner, Beersadhoo's house about five or six *coss* distant from Hidayutullah's was searched* and two silver armlets, not pairs, were found in that part of one of his huts used as a cow-house buried about one-half or two feet under ground. The search was conducted most irregularly, none of prisoner's neighbours apparently having been required to attend. A burkundaz† of the thannah probed the ground with his spear, two chowkeedars‡ of Hidayutullah's village were inside the hut, the mohurrir stood near the door and two of prisoner's§ neighbours were also about the same place, while prisoner himself who had been apprehended just before and had told them to search|| his house was outside altogether. In probing, the spear struck against some substance which was found to be a pot, about a span underneath the surface, and another span under that the armlets were found, when prisoner is said to have acknowledged that they were his share of the property stolen from Hidayutullah and that two others Ashuk and Sher Mahomed had the remainder. The armlets were recognized¶ and proved to belong to Burkutullah. witness No. 8, who had deposited them with his brother-in-law, witness No. 11. The prisoner was then taken to a zemindar's cutcherry three-half or four *coss* distant from his own house and within one-half or two *coss* of Hidayutullah's and his confession was there taken in detail and attested by two witnesses,* one a cousin of Hidayutullah and the other called uncle by him. The houses of the parties named by prisoner were searched and nothing found. On the trial before me, the witnesses to the search and finding of the property in prisoner's house, varied much from their evidence before the magistrate and also contradicted each other to a great extent, particularly with regard to the parties present at the search.

The prisoner denied all knowledge of the theft, repudiated his mofussil confession before the magistrate and here, and

* No. 1, Debaroo Fuqueer.
,, 2, Jhanpra.
,, 4, Bandura Chowkeedar.
,, 7, Jhanpra Chowkeedar.
Residents in Hidayutullah's village.
,, 3, Ameerullah, thannah burkundaz.
,, 14, Jhaoollah.
,, 16, Bajeh.
Witnesses for the defence.

† ,, 3, Ameerullah burkundaz.

‡ ,, 4, Bandura Chowkeedar.
,, 7, Jhanpra Chowkeedar.

§ No. 14, Jhaoollah.
,, 16, Bajeh.

|| ,, 3, Ameerullah.

¶ No. 8, Burkutullah.
,, 9, Fool Mahomed.
,, 10, Gunee Baneeah.
,, 11, Hidayutullah.

* No. 5, Suef Mahomed.
,, 6, Tofoor Mahomed.

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knew not how the armlets came to be found where they were. His witnesses* generally gave him a good character and two† of them having been present at the search of his house, were questioned regarding it and supported the evidence for the prosecution as to the finding by the burkundaz of the armlets buried in the hut, they differ from each other, however, as to the parties present at the search, &c.

* No. 13, Jhanpra.
,, 15, Boodharoo (same as 18.)
,, 17, Paglah.
† ,, 14, Jhaoollah.
,, 16, Bajeh.

The futwa of the law officer. Opinion and recommendation of the sessions judge.—The law officer convicts the prisoner on violent presumption of the first charge, I disagree, thinking there is nothing to warrant such a conviction beyond the mofussil confession upon which, taken as it was, no reliance can be placed. I convict on the 2nd charge, but I must say I should have acquitted on that charge too, had not the evidence for the prosecution been supported by two of the witnesses called by prisoner who, in spite of some discrepancies, establish, I think, the fact of the property having been found in prisoner's house. As the prisoner has not before been sentenced and does not bear a notoriously bad character, a sentence of three years' imprisonment with labor and irons will be an adequate punishment for his offence. I have brought to the notice of the magistrate the irregularities committed by the thannah mohurrir, in searching the prisoner's house and taking his confession, even the formal attestation of that confession was deficient.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The only evidence against the prisoner rests in the finding of two silver bracelets buried in his cowhouse. The sessions judge would have acquitted the prisoner on the 2nd as on the 1st charge, but for the depositions of Jhaoollah and Bajeh. One of these said the spot, where the property was found by the police burkundaz who drove his spear into various places of the floor, was accessible; the other that it was not.

There is not in our judgment satisfactory and sufficient proof against the prisoner. He is acquitted and released.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND RUTHNESSURE RAJBUNSEE,

versus

JADOO RAJBUNSEE.

Assam.

1854.

July 25.

Case of JADOO RAJBUNSEE.

Prisoner convicted of culpable homicide arising out of a quarrel about cattle trespassing, sentenced to fourteen years' imprisonment.

CRIME CHARGED.—Wilful murder of Dolal and Sadoo.

Committing Officer.—Captain William Agnew, magistrate of Gowalparah.

Tried before Brevet Major J. Butler, officiating deputy commissioner of Assam, on the 4th July, 1854.

Remarks by the officiating deputy commissioner.—The prosecutor Ruthnessure states as follows.

On the 1st June, Thursday, in the afternoon, my ryot Sadoo's *dhan* field was eaten by cows belonging to Jadoo prisoner; Sadoo took my brother Dolal to see the field, and on the road they met Jadoo prisoner, and abuse was given. Jadoo became enraged and with a *mukna* bamboo in his hand, first struck Sadoo a blow on the head and brought him to the ground, my brother Dolal then went to take him up, but the prisoner struck him also a blow on the head with the same bamboo, and his skull being broken he instantly died, and Sadoo from the effects of the severe blow he had received died that night at 12 o'clock.

I was not present when the cows ate the *dhan*, I was about one-half *coss* distant in the village of Lukymaree with my father-in-law, the affair occurred in the afternoon, a little afterwards I returned home, I heard what I have related from my father, and I also heard from him that Sadoo deceased first called the prisoner a *sala*, and that was the cause of his striking him. There was no enmity between the deceased and the prisoner, the quarrel arose from prisoner's cattle having eaten Sadoo's field of *dhan* the day before.

The deceased were in good health, and young Sadoo's skull was broken on the left side about nine or ten fingers in length, two or three fingers wide and three fingers deep, my brother Dolal was struck on the back of the head, a blow by the prisoner's bamboo causing a wound three fingers wide, three fingers deep and half a *hath* in length, which broke the skull and he died immediately.

My father is an old decrepid man, he heard the noise and quarrel, and Juggoo and Howreah witnesses also told him what had happened. On the day of the murder I returned home and heard what had happened and set out to report the matter to the thannah, and the next day, Friday, I reached the thannah. On Saturday the darogah with the mohurir went to the spot,

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and Badhokhon on the part of the zemindar came and apprehended the prisoner with the bamboo *lattee*, with which the murder had been committed, and made him over to the darogah, and the prisoner voluntarily confessed to the darogah that he had committed the murder.

Jadoo Rajbunsee prisoner wilfully refuses to make any reply or defence.

Witness No. 1, Juggoo. Saw the whole affair from beginning to end as he was grazing cows about forty paces distant.

Witness No. 2, Howreah. Was going along the road with a load and saw the assault committed by the prisoner, on Sadoo and Dolal.

Witness No. 3, Munsha. Heard the noise of a dispute a short distance from his house, and went out, and saw the prisoner assault Sadoo and Dolal. Nos. 2 and 3, witnesses know nothing of the cause of the quarrel, but heard from Juggoo that it was owing to the prisoner's cattle having destroyed Sadoo's field of *dhan*.

Witness No. 4, Bosoo. Witnessed the voluntary confession of the prisoner Jadoo Rajbunsee at the thannah before the darogah.

The prisoner confessed in the mofussil before the darogah that he had killed Sadoo and Dolal but unintentionally, they abused him, and being enraged, and *(behoosh)* out of his senses, he struck them. Before the magistrate and jury, the prisoner declined pleading to the indictment, but said he had no witnesses to offer in extenuation of his conduct.

Opinion of jury and magistrate.—Two members of the jury find the prisoner guilty of wilful murder, and one of culpable homicide, with the latter the magistrate concurs.

Opinion of officiating deputy commissioner.—This is a very aggravated case of culpable homicide, it appears that the prisoner tethered his cattle near the *dhan* field of Sadoo, and that his grain being destroyed, the next day 1st June, in the afternoon, Sadoo went with Dolal to see what mischief had been done ; on the road they accidentally met the prisoner, Sadoo called him a *sala*, this abuse excited the anger of the prisoner, and with a heavy large *lattee* he had in his hand (produced in court) two-half *haths* long and four inches in circumference, he at once struck Sadoo on the head a severe blow, which brought him to the ground, on this Dolal interfered, and the prisoner struck him also on the back of his head and killed him on the spot, Sadoo died during the night from the blow he had received

The prisoner gave the first provocation to this quarrel by tethering his cattle near Sadoo's field of *dhan*, and the abuse he received from Sadoo was not such as to justify the use of such

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a heavy bludgeon as that above described, as its weight and length was such as to cause certain death if a hard blow was inflicted.

There does not appear to have been any malice prepense. The violent assault was with little provocation committed in a fit of passion. Sadoo died a few hours after the blow was inflicted on his head, which fractured his skull, and Dolal instantly expired on the spot, his skull also being fractured.

I think the conduct of the prisoner is very reprehensible, and that he deserves a severe punishment; he is guilty of aggravated culpable homicide, and (14) fourteen years' imprisonment with labor and irons is not too severe for his offence.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner confessed before the darogah and stood mute before the magistrate, not denying the admission previously made by him.

There is no doubt of his guilt and, concurring in his conviction of the culpable homicide of the two men deceased, we sentence him as proposed to fourteen years' imprisonment with labor and irons.

PRESENT:

SIR ROBERT BARLOW, BART., AND
H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

MUNOO.

Hazareebagh.

1854.

July 26.

Case of MUNOO.

Prisoner convicted of the wilful murder of his wife, sentenced capitally, the defence set up by the prisoner being unsupported by any proof, and the act being premeditated.

CRIME CHARGED.—Wilful murder of Mussumut Deo Coomar, wife of the defendant.

Committing Officer.—Captain W. H. Oakes, principal assistant Governor-General's agent Lohardugga, Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 8th July, 1854.

Remarks by the deputy commissioner.—The Government is prosecutor in this case. The prisoner pleads guilty.

There being no witnesses to the fact, the circumstances of the case, as it appears in the magistrate's record, may here be briefly narrated.

On the 1st May, the prisoner and his wife Mussumut Deo Coomar, the latter desperately wounded, were brought to the police station at Palkote, by the rural police; Mussumut Deo Coomar then stated that her husband Munoo had wounded her while on the road at night. On the 4th May, she made a depo-

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sition before the principal assistant to the effect that on pretence of bringing her to her sister's house, her husband had at nightfall taken her to a tree near the village and had there without cause wounded her with a sword. They had stayed under the tree till midnight when he attacked her. No one had then made any attempt upon her person. The prisoner immediately fled, and she made her way into the village where she got aid from the villagers who had previously advised her not to go out that night.

Mussumut Deo Coomar died in hospital at Chota Nagpore on the 6th May.

The prisoner Munoo before the police officers, and before the principal assistsnt made voluntary confessions which have been duly attested by the witnesses who are named in the margin.*

* No. 3, witness Choomа.
,, 7, ,, Powna.
,, 8, ,, Byjoo.
,, 9, ,, Sheikh Bhoodhoo.
,, 10, ,, Sheikh Sahban.

These confessions are to the effect that three men, whom he does not know, came to where he and his wife were stopping, bound him with a rope, and then, in his presence, had successively carnal intercourse with his wife, who submitted without objection. When they departed he broke his bonds, and his wife not giving any explanation, he wounded her with a sword. The men had wounded him by drawing a sword across his belly. His wife had been staying for some time in her father's house, and he was bringing her home.

The evidence of the native doctor† shows that the wounds inflicted on the deceased were numerous and fatal. The wound on the prisoner's belly was merely superficial, deceased was about fifteen years of age.

† No. 6, Boodhooram.

The evidence of the father‡ of the deceased is to the effect that he knows of no previous dispute between the prisoner and his wife.

‡ No. 11, Haroo.

The prisoner in his defence states that his father-in-law, Haroo, compelled him to take away his wife notwithstanding that prisoner objected, because it was the last day of the moon. When they came to an open plain, prisoner's wife insisted on staying there and yielding to her, prisoner lay down to sleep. At midnight her three lovers came and bound him and wounded him and dishonored his wife, in his presence, wherefore he wounded her with his sword, and then after wandering about for several hours, he gave himself up to the police.

The jury,* whose names are entered below, find the prisoner guilty as charged.

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* Ukhory Enjory Lall Moktear.
Lalla Gujraj Singh, ditto.
Ramkanye Rae, ditto.

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Case of MUNOO.

I concur in this verdict. For the murder there is no reasonable cause apparent, the story told by the prisoner having no probability. There certainly was a slight wound on the prisoner's belly, a cicatrix being now distinctly visible, but so far from thinking that this is a confirmation of the prisoner's statement, I incline to the belief that the wound was self-inflicted, for it is perfectly straight across, as if one should hold the blade of a sword with both hands and inflict a wound therewith on himself. Yet under the obscurity that rests on this case I cannot recommend a capital sentence. There is no ground for a suspicion of previous quarrel. The prisoner and his wife had been resting for some time, and the story he tells may have been the impression of a dream. I would not on such a vague conjecture as this acquit the prisoner, but on any conjecture, not inconsistent with possibility, I would spare his life. I therefore recommend that the prisoner be sentenced to imprisonment for life, with hard labor in irons, transportation may be added at the discretion of the Court.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner admits having wounded his wife with a sword, because she gave him no answer as to what persons had during the night been carrying on an illicit intercourse with her. She died as the native doctor deposes of the wounds, which were numerous and fatal.

The prisoner defends himself on the plea that three persons came at night to the spot, where he and his wife were sleeping, bound him and then dishonored his wife, and at the same time wounded him. This wound is described to be a mere scratch and probably was self-inflicted. There is no evidence whatever to prove that Haroo turned his daughter and the prisoner out of his house, as alleged in the defence, none whatever to shew that the deceased had made an assignation with any one to meet her that night, which the prisoner would hint at; it is altogether improbable that being in company with her husband she should have made any such engagement.

The deceased in her deposition, on the contrary, stated that her husband, under the pretence of taking her to her sister's house, stopped under a tree to sleep, and at midnight attacked her.

There is strong presumption to believe that the murder was premeditated, the deceased was taken away from the village, and the prisoner makes a defence totally unsupported, endeavouring to substantiate it by the self-inflicted wound which only makes its falsity more apparent. We cannot account for the cause of this murder, but the fact is clear that the deceased met her death at the hands of the prisoner. We see nothing of a palliative nature which would justify a mitigated sentence and therefore sentence the prisoner capitally.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND GOUR BHOOYA,

versus

DEENBUNDHOO KUR.

Midnapore.

1854.

July 26.

Case of DEENBUNDHOO KUR.

Prisoner convicted of wilful murder sentenced to transportation for life, there being no such premeditation shewn as would justify a capital sentence.

CRIME CHARGED.—1st count, wilful murder in having wilfully and knowingly so severely wounded Sona Bhooya with a sword, that he died immediately after the infliction of the wounds from the effects thereof; 2nd count, having wounded witness No. 1, with said sword with intent to murder him or do him grievous bodily harm.

Committing Officer.—Mr. George Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 6th July, 1854.

Remarks by the sessions judge.—It is in evidence that some cattle having trespassed on the crops of Beerah Majee witness No. 1; he went on the evening of the 4th of June, to remonstrate with the owner, a brahmin residing in the same village: during the discussion that took place the prisoner, who lives close by, interfered, and a quarrel arose between him and Beerah, from words they proceeded to blows. The cries of the latter brought the deceased Sona Bhooya to the spot, who seized the prisoner by the hair of his head and endeavoured to rescue the witness Beerah. Upon this, the prisoner ran to his house, and immediately returned with a naked sword with which he killed Sona Bhooya on the spot, and severely wounded the witness Beerah Majee. From the inquest held in the mofussil and the evidence of the civil assistant surgeon, it appears that the wound on the deceased penetrated the left shoulder, completely dividing the collar bone and the structures and blood-vessels under it; that it was inflicted with a sword or other sharp-cutting instrument and that death must have been instantaneous. The wound also on the witness Beerah is represented to have been of a severe nature, inflicted likewise with a sharp cutting weapon and completely dividing to the bone, the muscles on the top of the left arm. The prisoner in the mofussil and before the officiating magistrate confessed to having killed the deceased and wounded Beerah Majee, but pleaded that he was instigated to do so to repel the assault which they made upon him with *lattees* or sticks; in this court he pleads *not guilty*, but offers no defence. The witnesses depose that neither deceased nor the wounded man had any weapons of defence with them; the prisoner's statement that he was assaulted with sticks must therefore be regarded merely as an excuse to

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justify his murderous attack. His interference in the quarrel, in the first instance, was totally uncalled for, and the plea that he was excited under a paroxysm of rage, could scarcely be admitted in extenuation, even *had* the weapon he made use of been in his hand at the moment, but can have no weight whatever when it is considered that, between entering his house and returning with a drawn sword, some little space intervened affording opportunity to reflect on the consequences of the act he was about to commit. The animus which influenced him may be inferred from his attack on Beerah Majee *after* he had laid Sona Bhooya dead at his feet; this circumstance together with the fact of his using a weapon of such a deadly nature, leave no doubt that his intention was to take the lives of both his opponents.

The only point that can be urged in extenuation, to save him from suffering the extreme penalty of the law, is the absence of malice prepense, there being no grounds for supposing that previous to the quarrel, any bad feeling or enmity existed between the parties; the severest sentence however short of death should in my opinion be passed on him. The assessors declare the prisoner guilty of bot i counts of the charge preferred against him and as I concur in this finding, I would recommend that he be imprisoned for life in the jail at Alipore.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The prisoner before the police and the magistrate admitted the assault, but pleaded self-defence. The evidence clearly establishes his guilt whilst his defence fails altogether.

The act was not premiditated, some words of abuse had passed between the deceased and the prisoner when the former seized him by the hair, and he, in the anger of the moment, brought his sword from his house, five *haths* distant, and cut down the deceased.

There was no such interval as to lead to a belief that the murder was premeditated, or that time for reflection intervened. We concur in the conviction and the sentence proposed by the sessions judge.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND ASHRUFF MULLICK,

versus

SHEIKH TALOOK ALIAS TALIB.

24-Pergunnahs.

1854.

July 26.

Case of SHEIKH TALOOK alias TALIB.

Prisoner convicted as an accomplice in the wilful murder of a man who was intriguing with one of the females of the family, sentenced on account of his youth to five years' imprisonment.

CRIME CHARGED.—1st count, wilful murder of Harroo Mullick; 2nd count, being accomplice in the above crime.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the Twenty-four pergunnahs, on the 4th July, 1854.

Remarks by the officiating additional sessions judge.—The prisoner pleads *not guilty* to the charge of wilful murder, committed under the following circumstances.

The deceased was the prosecutor's son and had been carrying on an intrigue with the prisoner's sister, much to the annoyance of the family and against their oft-repeated prohibition. He was a day-labourer and in the habit of working at the house of one Durgaram Kolu. On the 8th of May last, he went as usual to his work, but did not return home in the evening. As the night was stormy and it rained heavily, his father did not take much account of his absence, but finding that he did not come in the morning, got apprehensive and went in search of him. He had not proceeded far when he was told by one Giaram Manjee that a corpse was lying in an adjoining field. He went to the spot and to his horror found the body of his son with the head half buried in the earth. The skull was fractured and one of the eyes knocked out. Seeing marks of feet in the place where the body lay, he followed the direction they indicated. This led him to the residence of the prisoner and his family. He examined the house and found marks of blood on the wall, the floor recently scraped and fresh cow-dung spread here and there as if to efface marks and appearances. He communicated his observations and the finding of his son's body to the persons named in the margin,* who reside hard by, and they informed him that during the night they distinctly heard the cry of *bapra* proceeding from the prisoner's abode. They were cognizant of the intimacy between the deceased and the prisoner's sister and at once suspected his party of the murder.

* Sheikh Peru, witness No. 4.
Bhuta Betee, witness No. 5.

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Case of SHEIKH TALOOK alias TALIB.

The corpse was so much decomposed, when submitted for dissection, that the civil surgeon,* was unable to do more than examine the upper part of the skull. He states that he could not consequently detect any trace of injury on any part of the body.

* Norman Chivers, M. D., witness No. 3.

The inquest held on the body by the police will be found attested by the witnesses, Nos. 4 and 5, above noticed. The record shows that the skull of the murdered man had been fractured, and that there were several contused wounds on various parts of the person.

The persons, indicated in the margin,† prove that the blood-stains were found in the house of the prisoner's father the day after the murder, as above described.

† Rubiram Bacte, witness No. 12.
Mudhu Dhara, witness No. 13.

The prisoner confessed both before the police and the magistrate. These confessions are verified by the parties, marginally noticed,‡ and clearly prove the prisoner's complicity in the murder. Indeed in his foujdary confession he admits that he struck the deceased once with a *lattee* handed to him by his brother-in-law, Haree Sheikh, released by the magistrate.

‡ Kabil Lushmul, witness No 6.
Shumbhuram Das, witness No. 7.
Kalikishun Nag, witness No. 10.
Omachurn Ghose, witness No. 11.

The prisoner denies charge and repudiates these confessions before this court. He pleads an *alibi*, but the three witnesses examined on his behalf disavow all knowledge of his whereabouts on the night of the murder.

The *futwa* of the law officer convicts the prisoner, Sheikh Talook alias Talib, of being an accomplice in the murder of Haroo Mullick and declares him liable to *kissas*.

I concur in the finding. The prisoner has without doubt taken part in a murder, and thus incurred the extreme penalty of the law; but there are considerations which deter me from recommending a capital sentence. The prisoner's age scarcely exceeds sixteen years, and he was not the principal actor in the tragedy, and in such a case, justice can plead for mercy and the law be vindicated without the blood of the victim. I therefore propose, that the prisoner be sentenced to imprisonment for life in transportation.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The only account of the case is that given by the prisoner in his confessions. From them it appears, that the family were exasperated at the visits of the deceased to their female relative, and having caught him *in the house* beat and killed him; but looking at the age, only sixteen years, of the prisoner before us, his not being a principal in the murder, and the circumstances of provocation which induced

the criminal acts on his part, we convict him of being an accomplice in murder, and sentence him to five years' imprisonment with labor and irons.

1854. July 26. Case of SHEIKH TALOOK alias TALIB.

PRESENT:

SIR R BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND KOMUL BALA,

versus

OODAI CHAND KAPALEE (No. 2, APPELLANT) AND MUSST. SREEMUTTEE (No. 3.)

Dacca.

1854. July 26. Case of OODAI CHAND KAPALEE and another.

The conviction and sentence passed by the sessions judge in a case of severe wounding with intent to murder were upheld in appeal.

CRIME CHARGED.—Prisoner No. 2; 1st count, severely wounding the plaintiff Komul Bala in several places with intent to murder him; 2nd count, severely wounding the plaintiff. Prisoner No. 3, 1st count, being accomplice to the above crimes; 2nd count, being accessary before and after the fact.

CRIME ESTABLISHED.—Prisoner No. 2, severely wounding the plaintiff with intent to murder him, and No. 3, being an accomplice to severely wounding the plaintiff with intent to murder him.

Committing Officer.—Moulvie Zynooddeen Hossein, deputy magistrate of Manickgunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 15th May, 1854.

Remarks by the sessions judge.—The prosecutor stated that he was asleep with his wife, the prisoner No. 3, when about midnight he was assaulted by his cousin the prisoner No. 2, who had for some time carried on a criminal connexion with his (the prosecutor's) wife. He gave the alarm, when the witnesses Nos. 7 and 8, came to his assistance, and expelled the prisoner No. 2; the wife had left the hut.

The evidence was corroborated by the witnesses Nos. 7 and 8, who came on the alarm being given, but who differred so far from the prosecutor, that they said the prisoners were leaving the hut when they arrived. Ruttun Sircar (witness No. 3,) saw the prosecutor when wounded and heard from him that the prisoner had committed the crime. This witness also stated, that he had acquainted the chowkeedars (prisoners Nos. 9 and 10,) with this circumstance.

The prisoner Oodai Chand confesssd at the thannah and before the magistrate, alleging the ill-treatment of the female

1854. July 26. Case of OODAI CHAND KAPALEE and another.

prisoner by the prosecutor as his motive. In this court, he denied his guilt and called witnesses, who did not depose in his favor.

The prisoner Sreemuttee (No. 3,) admitted being aware of the intended crime, at the thannah. She denied being guilty before the magistrate and in this court, but fully admitted being present, and said she gave the alarm, which was false.

Against the prisoners Nos. 9 and 10 nothing whatever was established. They ought not to have been committed for trial, as by the deputy magistrate's *roobukaree* it would seem he depended on the darogah's report to prove their guilt.

I agree with the law officer as regard to the prisoner No. 2, and as regards No. 3, except so far that I convict her on the 1st count, as an accomplice, not as an accessary before the fact. She was aware of the intended murder, and was present at the time the crime was committed.

The crime was committed in the month of Assin, 1260, or September or October, 1853, and no complaint made till the 26th December, 1853.

The prosecutor, prisoners and witnesses are all connected with each other and the prosecutor wished to withdraw his suit, which was not permitted. There was no *sooruthal*, as the prosecutor's wounds had healed.

Sentence passed by the lower court.—Prisoner No. 2, to be imprisoned for the period of ten (10) years with labor and irons; prisoner No. 3, to be imprisoned for the period of five (5) years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The Court on appeal by the prisoner, Oodai, see no reason to interfere with the sessions judge's order.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT ON THE INFORMATION OF REKEN LUSKER,

versus

RAJUNG GARROW.

Assam.

1854.

July 26.

Case of RAJUNG GARROW.

The prisoner, a Garrow, convicted of wilful murder, having lain in ambush and deliberately cut down the deceased, who was his uncle, sentenced capitally.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Captain William Agnew, magistrate of Gowalparah.

Tried before Brevet Major John Butler, officiating deputy commissioner of Assam, on the 20th June, 1854.

Remarks by the officiating deputy commissioner.—The case was tried by Capt. W. Agnew, magistrate of Gowalparah, assisted by a native jury, in accordance with the rules for the administration of criminal justice in Assam.

The informant, Reken Lusker, Garrow, states before the magistrate as follows.

Reken Lusker Garrow's evidence given before the magistrate.—About seven days ago the prisoner, Rajung Garrow, came to me, and voluntarily told me that his uncle, Seloom Khan, having seized him by the private parts, in a fit of passion, with the sword presented in court, he had killed him. To ascertain the truth of his statement, I went with Rajung prisoner to the place, where the deed had been committed, and saw the body of Seloom Khan lying at the south side, of distant about the flight of three arrows from his house, in some jungle, there were wounds on the right shoulder and on the waist, these two wounds were by a sword and very severe. The wound on the shoulder extended to the breast, and the waist wound extended to the navel and death ensued; on enquiry amongst the villagers I could gain no information, but Rajung confessed that he had killed Seloom Khan Garrow, and I saw the dead body, I therefore considered him guilty, and brought him to the magistrate. I do not know why Seloom Khan seized Rajung by the private parts, but on asking the prisoner, he said that Seloom Khan was mad, and without any cause seized his private parts, and in a fit of passion he cut him down. I do not know that any one was present when the prisoner killed Seloom Khan. The prisoner said he did not see any one present when he killed him, I know that Seloom Khan was half mad. There was no previous ill-will between the prisoner and the deceased, Seloom Khan; no person was acquainted with the murder of Seloom Khan by the prisoner, and when the prisoner confessed to me that he had committed the murder, no person was present. On hearing it, I told the circumstance to

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Ramding, Gurman, Jalong, Kutohing, Garrows of my village; I do not know that the deceased has any relations; his house is in the village of Singree, he is of a dark complexion, tall and thin and old, but not sick, the deceased seized the prisoner by his private parts in his own house, and the prisoner became enraged, on this account the deceased became alarmed and fled to the jungle, and the prisoner went there and killed him, this I hear from the prisoner; where the murder was committed there is no house near, the deceased has only a wife, and she is blind and cannot see. In this month, when about fifteen days had elapsed, the prisoner told me, and I recollect when I saw the corpse it was not swollen or rotten, no care was taken of the corpse, and now the jackals and dogs will have eaten it.

Rajung prisoner.—The prisoner, Rajung pleads guilty of having killed his uncle, Seloom Khan, by inflicting two blows with the Garrow sword presented in court.

Idang No. 1, witness for prosecution. I am acquainted with the murder, I do not recollect the hour and date; one day in March last, early in the morning, the prisoner was slothful in performing household duties and the prisoner's uncle, the deceased, Seloom Khan, abused him, and it was returned, when the deceased seized the prisoner by the private parts, who in a rage, having the Garrow sword, now in court, in his hand, struck the deceased on the left waist a blow, which made a wound of four fingers long, when the blood began to flow; according to the deceased's desire I went and brought some medicine from the jungle and placed it on the wound and stopped the wound. The next day, the deceased asked me to accompany him, I will report what has happened to the thannah, I living in the deceased's house, in the morning went with him, towards the thannah, and about four *dunds* in the day, when we reached the Kelgrund hill on the east side, about an arrow's distance from it, the prisoner, lying in ambush in the jungle near the road, came out on our left hand with a sword suddenly, and gave the deceased a blow on the right side of the neck with the sword now in court with both hands, which nearly severed his head from his body, and on falling to the ground he gave him another blow on the back of the waist, and then he gave him another blow separating his head from the body, and took it and burned it at a little distance from the place, where the murder had been committed, afterwards by great persuasion, he induced me to remove with him the corpse to a place, about thirty or thirty-five *haths* distant from the spot on which the murder had been committed, and then he fled from the place, but on running away, he said, I am going to Reken Lusker's house, I returned from the place, where the murder had been committed to my house. The prisoner enjoined me not to mention what had happened to any one, therefore I remained silent, but living

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in the deceased Seloom Khan's house, the darogah sent for me, and on enquiry I told him the whole. The month now specified by me is the month in which the murder was committed, I did not recollect before to mention the wound given in the waist, but what I have now said is correct. There was no ill-will between the deceased and the prisoner, the deceased was a little mad, he invariably gave the prisoner abuse about household concerns, and on this account, they were always quarrelling. The deceased is the prisoner's uncle, and they ate together and lived in one house. The murder was committed about four *dunds* distance from the deceased's house, there was no village near the spot where the murder was committed, there are villages situated one day, one-half days, and on some quarters two *puhurs* distant from the place where the murder was committed. The deceased has three brothers and one wife. They do not reside in the deceased's house, but at two or one-half day's journey distant, and his wife's name is Bukleshe, is old and blind; when the deceased first in his house quarrelled with the prisoner, she in some way went out. The prisoner came from the left side, and committed the murder, I before erroneously said he came from the right, the deceased was of a dark complexion, tall, stout body, I cannot specify his age, not very old, middle age, a little weak, but not sick.

Otthong 2nd witness for prosecution,
Rengman 3rd witness for ditto,
Kelloo 4th witness for ditto,
Jeeram 5th witness for ditto,
Rangam 6th witness for ditto.

Heard of the murder of his deceased relative Seloom Khan, in Chyte last, and went to perform his funeral obsequies, saw the headless corpse with a severe wound on the waist and two sword cuts on the left hand, burnt the body and the head also, which they found at a little distance from the body. The body was three or four *dunds* distant from the deceased's house.

Assam 7th witness for prosecution,
Naban 8th witness for ditto.

Witnessed the apprehension of the prisoner and his voluntary confession before the magistrate that he had murdered, with a Garrow sword, Seloom Khan Garrow.

Confession of Rajung before the magistrate.—It is about fifteen days ago, when one day in the morning, my uncle and master seized me by the private parts, which put me in a rage, and I went out into the jungle about three arrow flights distant, and with a Garrow sword gave my uncle a wound on the right shoulder and waist and murdered him. This I confess freely, no one advised me or assisted me in murdering him, I have no witnesses or any thing to offer in my defence, but my uncle being mad when he seized me by the private parts in the house then, and afterwards I beat him and murdered him, and no one

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saw what passed; after the murder I went and told Musst. Bakleshe, deceased's wife, of it, as she is blind, afterwards I went myself to Reken Lusker and related the whole affair to him, and the Lusker saw the corpse.

There is no house near the place where the murder was committed, and no one was present when the murder was committed, I had no ill-will with my uncle, I resolved on killing him for seizing me by the private parts, and with the Lungbarree sword first I struck him on the shoulder which extended to the breast, and he fell to the ground, again giving him a cut in the waist, it reached the navel, and his bowels fell out, on the first stroke, my uncle cried out, I am killed, no one being near came to his assistance, and there were no witnesses to the deed.

Before the jury the prisoner states that his confession of guilt to the magistrate is correct, I have no witnesses or excuses to offer, but merely to urge that the deceased was my uncle and being like an elder or priest to seize my private parts he did very wrong, and on this account I became exceedingly enraged, and on the first day, I gave him a wound with this sword on his left hand, and the next day the deceased intimidated me very much by saying, I will go to the thannah and complain and cut off your head, and that of all your clan; saying this, he set out for the thannah. From fear of my life, I went and lay in ambush near Kelgrand hill, and murdered the deceased—this is my defence.

The interpreter, Gungaram Dobashea, on oath declares that he has translated the evidence correctly.

Opinion of jury and magistrate.—The jury find the prisoner guilty of wilful murder and the magistrate concurs in thinking the verdict a correct one, but as the prisoner, in his confession before the jury, says he acted from fear to save his life, and not from malice prepense, and having delivered himself up to the Lusker and voluntarily accompanied him to the magistrate is an indication that he did not feel he had committed a deliberate murder; under these circumstances, he recommends a sentence of imprisonment for life being passed.

Opinion of the officiating deputy commissioner.—The prisoner lived in the same house with his uncle, who, it is said, was not of sound mind, and that they were always quarrelling, and the day before the murder after some altercation in the house the uncle seized his nephew, the prisoner, by the private parts, on which, being exceedingly exasperated at his indecorous conduct, he gave him a wound with a Garrow sword on the left arm. The next morning the uncle and No. 1 witness, Jalong, set out to report to the thannah the nephew's violence. The prisoner then went and laid in ambush in the jungle near the road, and suddenly rushed out with a Garrow sword, and with one blow nearly severed his uncle Seloom Khan's head from his body, and

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when he fell to the ground, he inflicted another serious wound on the waist and Seloom Khan instantly expired. Having committed this atrocious act, he prevailed on Jalong, No. 1 witness, to assist him in removing the corpse a short distance from the spot, and enjoined him not to say anything to any body of what had happened, as he intended reporting the whole affair to Reken Lusker or chief, who took him to the magistrate when he confessed his guilt.

There is only one eye-witness, of the murder, Jalong, No. 1 witness. Five witnesses saw the corpse of the deceased Seloom Khan Garrow and the wounds, on the waist and left arm, as well as the head separated from the body.

Two witnesses depose to the voluntary confession of the prisoner before the magistrate and jury.

The plea urged by the prisoner in his confession before the jury that he murdered the deceased Seloom Khan, from his having intimidated him, and from fear of his own life, does not appear to me an extenuation of his conduct; when his uncle treated him indecorously, which doubtless was a great provocation, he instantly wounded him with a sword, and the next day, when he had time to reflect on the matter coolly, he went stealthily and lay in ambush in the jungle, and deliberately rushed out on his uncle on his way to the thannah to complain of his violence, and with a Garrow sword ruthlessly murdered him; considering him guilty of a cold, premeditated, brutal, cruel murder, and seeing no palliating circumstances to render him an object deserving of a mitigated punishment, I feel bound to recommend that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The particulars of the case are very fully reported by the magistrate and the officiating deputy commissioner, and it is clearly proved by the evidence of an eye-witness, as well as by the prisoner's confessions that after having wounded the deceased for the assault which he committed, the prisoner next day laid in ambush and as Seloom, the deceased, was *en route* to the thannah rushed upon him and cut him to pieces on the spot.

We concur with the deputy commissioner in the prisoner's conviction, and sentence him to death.

PRESENT:
SIR ROBERT BARLOW, BART., AND
H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,
versus
TABOO (No. 1,) ROORAHE (No. 2,) DIKWAH (No. 3.) KOPHAW (No. 4,) PHAKOO (No. 5,) AND NGA THA YAH (No. 6.)

Tenasserim.

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Case of TABOO and others.

The prisoners who were Burmese wood-cutters, seized four Shans on suspicion that they were elephant-stealers, and deliberately cut off their heads. Two of the prisoners who were chiefs of the village, and by whose order the other prisoners acted were convicted of instigating and directing the murder, and were sentenced capitally. The others on account of their ignorant and half-civilized state were sentenced to 14 years' imprisonment.

CRIME CHARGED.—Prisoners Nos. 1, 2, 3 and 4 murder, and prisoners Nos. 5 and 6, accessaries before the fact and instigators of the said murder.

Committing Officer.—Captain S. R. Tickell, magistrate of Amherst, Moulmein.

Tried before Lieutenant-Colonel, Sir A. Bogle, Knight, commissioner of the Tenasserim and Martaban provinces, on the 30th May, 1854.

Remarks by the commissioner.—The circumstance is a remarkable one. On suspicion of being elephant stealers, four unfortunate Shans were seized by some of the inhabitants of one of our frontier villages, and without any enquiry and for no better reasons apparently than that the courts of Moulmein do not visit such offences with the severity desired by some savage minds, these poor creatures were marched off to the outskirt of the village of Yeboo and there deliberately murdered.

The first three witnesses who saw the murders committed, depose to all the particulars in a very clear and lucid manner, and the fourth witness although he does not admit that he saw the Shans killed, states that he took them as prisoners to the house of the headman or Keo of the village, and there left them in charge of the four first prisoners, and that evening he heard that they had been killed.

The four first prisoners fully confess to having killed the four Shans and entirely agree as to all the particulars of the sad affair, and the fifth and sixth prisoners although they at first pleaded *not guilty*, yet fully confessed to having instigated the murders.

The case is so singularly clear that there can be no doubt about it, but I solicit attention to the magistrate's proceedings,*

* *Remarks by the magistrate.*

Read report from Goung Gyoop of Dagying Hlanbuee.

Poorathee and six others of Melan in the Yahyn territories lost an elephant. They went in search of it, and entered the British territories at a spot about a hail from the village of Yeboo, they came upon the elephant standing alone with no one in charge of it. Next morning they met four Shans whom they seized, as well as their property. About 4 P. M. of that

which are in some respects even more full than those held by myself. 1854.

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day, Nos. 5 and 6, who are (5 the deputy and 6 the Tsaukay of the village) ordered the four Shans to be killed. On which Nos. 1, 2, 3 and 4, took them to a plain about a hail off from the village and killed them.

On being questioned they replied that they had acted by 5 and 6's orders. I have brought the whole of them down with my proceedings.

Order.—The depositions of the parties to be taken to-morrow. The prisoners to be kept meanwhile in the Goung Gyoop's charge and placed in the police thannah of division No. 4, of the town.

Ngatynphaw—Son of Ootowk is sworn in as a special interpreter.

The information of the Goung Gyoop (contained in his report) is read out and explained to the prisoners. They are then called upon to plead guilty or ***not guilty*** of the murder of the four Shans and 5 and 6 of instigating the murder.

1. Taboo pleads guilty.
2. Roorahe pleads guilty.
3. Dikwah pleads guilty.
4. Kophaw pleads guilty.
5. Fhakoo pleads guilty of instigating the murder.
6. Nga tha yah pleads guilty of instigating the murder.

Ordered.—The prisoners' confessions to be taken on certified papers.

I hereby certify that this confession of Taboo son of (unknown) Tribe Kareen, hillman, was made by the said Taboo and taken down in writing and attested by the subscribing witnesses before me and in my presence on the 10th May, 1854, between the hours of 1 and 2 P. M, that to the best of my belief the confession was voluntary, and that no interference directly or indirectly on the part of any person likely to influence or intimidate the prisoner was permitted.

Confession of Taboo.—We (that is Poorathee No. 2, Kloomee, Hoyná Phaey, Sophan and I) were cutting timber in *Methalan* forest. We lost our elephant there. We went in search of it and found it near *Yeboo*. We went to *Thinyalee* near *Yeboo* and lodged at the headman's house, Kauhe. (He is the head timber man) We tied the elephant up near his house, next morning while the elephant was grazing, one *Naudee* a resident of Yeboo, told us that he had seen two Shans buying elephant's gear at a Thoung-tho village. Five of us went off to see who they were, but they were gone. After this I and one Phakloopa came back again. Poorathee, No. 2, and four Thoungthoos continued in search of the two Shans. On our return we saw three Shans going into Takra's house and I 2, and Phakloopa went and seized them, and took them to No. 6, (who is the Khan or head of the village.) He was not at home and we waited in the jungle for him. On his return, the other party Poorathee No. 2, and the Thoung-thoos also returned with another Shan a prisoner. A consultation was held, No. 6 said they are all thieves, kill them all, No. 5 came and told us of this determination. On our demurring about it, he said he would stand the blame, and repeatedly told us, we must take them away and kill them, so we tied their arms and took them to a plain to the west of Yeboo and killed them all. Four of us did it. We killed a man each, I killed one Nos. 2, 3 and 4, killed one each. We struck them on their necks with *dahs,* but did not entirely cut their heads off. No one held them, they did not attempt to escape as their hands were tied. They said they had come to look for their own elephants, we suspected them to have stolen ours. I do not know their names, no one of us knew them. No. 6 said they were thieves, because they claimed the very elephant we knew to be our property. Poorathee Phakloopa, and Páhe were present when they were killed.

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The jury who assisted me in the trial found all the prisoners guilty and I entirely concurring in this verdict, have felt it my

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I hereby certify that this confession of Roorahe son of Thedoo, Tribe Kareen, hillman was made by the said Roorahe and taken down in writing and attested by the subscribing witnesses, before me and in my presence on the 10th May, 1851, between the hours of 2 and 3 P. M. that to the best of my belief the confession was voluntary, and that no interference directly or indirectly on the part of any person likely to influence or intimidate the prisoner was permitted.

Confession of Roorahe.—I and several others were cutting timber and lost our elephant. We went in search of it and found it near *Yeboo*. We took it to the timber headman's house at Thinyalee where all staid for the night.

Next morning one Nandy came and told us that the thieves who had taken the elephant were in the village, I and Poorathee went with four Thoungthoos in search of them and found one man in the jungles whom we seized and asked him where his companions were, he said they had gone in search of an elephant. We then brought him to No. 6's house and on the way seized three more men in Takra's house. No. 5 went and asked No 6, (on the latter's return home) what to do with the thieves, No. 6 said "kill them all." On our demurring to do so, No. 5 said there was no fear in killing thieves No. 6 said the same, so we took them away and killed them. Each of us killed one man. We struck them on the neck with our *dahs*, their hands were tied, they stood still and did or said nothing. I do not know what village they belonged to.

Yeboo is under No. 6, and No. 6 is under a Goung Gyoop I do not know his name, but he is a subject of the East India Company. The elephant belonged to *Kauhé* he was not present at the execution of the four men.

I hereby certify that this confession of Dikwa son of Theenkphoo, Tribe Hill Karen was made by the said Dikwa and taken down in writing and attested by the subscribing witnesses before me and in my presence on the 10th May, 1854, between the hours of 2 and 3 P. M. that to the best of my belief the confession was voluntary, and that no interference directly or indirectly on the part of any person likely to influence or intimidate the prisoner was permitted.

Confession of Dikwa.—I am an inhabitant of Thinyalee, a number of Shans came there saying they had lost an elephant and that the thieves were in Thiyalee. Upon which they seized several people and took them to No. 6. They seized the four men who were afterwards killed. The deputy Tsaukay (No. 5,) told me to take charge of them which I did till No. 6 returned, when No. 4 went and spoke to him and No. 6, said, "the four men are bad people, kill them all" No. 5 told us this. He told me I must kill one of them, so I went with the others leading away the men by the rope which their hands were tied with and killed them all. Each of us killed his man, I killed the man I had by striking him on the neck with a long *dah*. I had No. 1's *dah*, that is a *dah* No. I had lent me. They said nothing. They did not cry or resist or try to escape, they stood and let us cut them down. They confessed they had stolen the elephant, this I heard from Poorathee.

I killed one of the men because I was ordered to do so by No. 5. I heard from others they had stolen elephants before. They had been seized in Takra's house, all but one who had been found in the jungles. Yeboo is in the Company's territories. The bodies were left in the jungles. I do not know what became of them. Takra was not at home. The men killed were Shans, but I do not know from what village.

painful duty to record a sentence of death against all six, but as it is proved that the first four named Taboo, Roorahe and Dik- 1854.

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I hereby certify that this confession of Kophaw of Melamá in Yahyn (Shan states) son of (unknown) Tribe, Hill Kareen was made by the said Kophaw and taken down in writing and attested by the subscribing witnesses before me and in my presence on the 10th May, 1854, between the hours of 3 and 4 P. M., that to the best of my belief the confession was voluntary, and that no interference directly or indirectly on the part of any person likely to influence or intimidate the prisoner was permitted.

Confession of Kophau.—I came with the timber headman Kawhi to Thinyalee for provisions; while there, I went out one day to bring in a strayed elephant. On my return I saw some Shans catching three men, I was called on to assist in securing them. We took them to No. 6's house at Yeboo. The deputy No. 5, was only there and on No. 6's return went and spoke to him on which No. 6 said, Kill them all. We demurred, but No. 5 told us there was nothing to fear.

We then, that is I, Nos. 1, 2 and 3, took each a man with his hands tied behind his back, to a field a little away off and there we killed them by striking them on the neck with *dahs.* As they stood No. 1, killed his man first, then No. 2, then No. 3, and then I, No. 5 came up afterwards.

They were seized because they were thieves. People said they had stolen an elephant, I did what I did by order of Phakoo No. 5, I do not know what village the four men belonged to, they were Shans.

The men that were killed said nothing that I heard. They did not beg for mercy, they said nothing at all.

I hereby certify that this confession of Phakoo of Khettoo Yooe in Dagying Hlanbuee son of Tokee, Tribe Hill Kareen was made by the said Phakoo and taken down in writing and attested by the subscribing witnesees before me and in my presence on the 10th May, 1854, between the hours of 3 and 4 P. M., that to the best of my belief the confession was voluntary, and that no interference directly or indirectly on the part of any person likely to influence or intimidate the prisoner was permitted.

Confession of Phakoo.—The four men who were killed had often been in the habit of coming to our neighbourhood to steal elephants, and had as often escaped us before, but this time we killed them, I ordered my lads to kill them, that is Nos. 1, 2, 3 and 4, which they did, I am Kedangyee or deputy headman in the village, I was made so by the former Goung Gyoop Moung Lan San.

I have been deputy Tsaukay longer than I can remember, ever since Moung Lan San's time. I am an ignorant man and thought it quite proper to order thieves to be killed, I never did so before, I never had a thief brought to me before, I have been to Moulmein four or five times before bringing revenue, my stay has been usually three and four days, I know that thieves, murderers and such like are to be seized and sent into the court at Moulmein. But in the present case I could no longer put up with the thefts of these men, and knowing no better I ordered them to be killed.

I do not know the names of the men who were killed, I did not know their countenances, I never saw them before. People said these are the men who stole Ngata's elephant, and Then Giow's elephant and Ngatanroe's elephant, all this year, and Kauhe himself said they had stolen his elephant this time. The Khian (No 6,) said so and Kauhe, no one else that I know of. Keeda and Ngopi, besides all of us, prisoners, heard the men confess to stealing all the above elephants.

I hereby certify that this confession of Nga tha yah of Yeboo in Dagying Hlanbuee son of (unknown) Tribe Toung-thoo, was made by the said Nga

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wah and Kophaw acted under the directions of the two others named Phakoo and Nga Tha Yah, and the first, third and fourth

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tha yah and taken down in writing and attested by the subscribing witnesses before me and in my presence on the 10th May, 1854, between the hours of 3 and 4 P. M., that to the best of my belief the confession was voluntary, and that no interference directly or indirectly on the part of any person likely to influence or intimidate the prisoner was permitted.

Confession of Nga tha yah —I ordered the men to be killed, because they were thieves. They had often been robbing us before, and having caught them at last we killed them.

I knew they had robbed us before, because every time they had come to our village, something or other was missing, my brother Ngada's elephant had been stolen from my village last hot weather, that is two or three months ago, and the villagers said these same four men had been in the village just at the time ; I know of no other occasion, I did not see them myself on that occasion ; I never saw them in fact before. The prisoners Nos. 1, 2, 3 and 4, accused them of stealing Kauhe's elephant, Kauhe did not accuse them ; he merely claimed his elephant. Nos. 1, 2, 3 and 4, said that the elephant had been found in the possession of the deceased men ; I did not ask them whether they had stolen it, for I never saw them, they were accused of being thieves and so I said to those who accused them, If they are thieves, kill them.

I am not headman of my village that is, I have not been regularly constituted headman of my village. All of us take charge of it in turn, I collect the revenue, together with the elders of my village and so they look to me as the headman ; I came to Yeboo five year's ago. I lived before that at Thutton in the Munno division of the Shan province. My father-in-law was headman of the village of Yeboo when I came ; he died a year after, and I have been headman since. I know it is my duty to seize and send in thieves, dacoits, murderers, to the court. The present Goung Gyoop told me so. But so many men had been let off by the court lately who were cattle-stealers that I was determined these men should not escape. Thirteen cattle-stealers were acquitted and only two or three put in jail. It is true I did not take any means to prove the men had stolen elephants, I was hungry and angry and ordered them to be taken off and killed.

Evidence for the prosecution.

1st witness.—*Poorathee* of Melana in Yahyn (Shan territory) son of Mooee, aged about twenty. Being warned to speak the truth and having promised to do so, but being apparently unaware of the nature of an oath, deposes.

A number of us were felling timber at Methalan for Kauhe, we lost an elephant and went in search of it. On the 2nd day we found the animal near Yeboo no one was in charge of it, we untied it and brought it to Kauhe's house at Thiyalee and staid there.

Next day a Thung-thoo came and told us he had seen two Shans in his village who had come to buy elephant's gear. Five of us set off after them, but we could not find and so returned to Thinyalee. A little while after, two of us and some Thoung-thoos made a second expedition in search of them, and discovered a Shan near the spot where we had found the elephant hiding in the jungle. We seized him and asked him if he had any companions. 'He said, "yes, three, and that they were gone in search of an elephant," a little while after this, and when we had returned to Thinyalee, three Shans arrived and went into *Thawa's* house when they were seized by Phakloopa.

Nos. 1, 3 and 4, took the Shans to No. 6's house, several others and I followed. No. 6, was absent but returned shortly after and while we waited

are very young, I venture to recommend that the lives of all four may be spared and that they be imprisoned with labor in irons for (14) fourteen years.

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at a short distance from the house, Nos. 6 and 5 consulted together, and presently came and told us to kill all four of the Shans. We said we were afraid, but Nos. 6 and 5 said there was no fear, that they would stand the consequences. On this Nos. 1, 2, 3 and 4 bound the prisoners and each took a man off to a small open space in the jungle, and there killed him, I and Phaey and Phaklomee followed and saw them killed.

Questioned by the court.—They were killed by being struck with a *dah* on the nape of the neck, their heads were not quite dissevered. Each prisoner received one blow, No. 1 struck the first, then No. 2, then No. 3, and then No. 4, No. 1 held them. They said nothing. They stood up bound as they were and were struck down. Each man died with one blow, No. 5 met us as we were returning, the bodies were left behind.

No. 6 did not ask the dead men any questions, but Phakloopa did. Phakloopa accused them of stealing the elephant, and they confessed they had, at least so Phakloopa said; for they were talking in Burmese, which we do not understand.

2nd witness.—Phakloopa of Thinyalee son of Khanchinch, aged thirty, being sworn deposes.

No. 2 and several others had come to our village in search of an elephant which they had found near us. It had been stolen by some one. They day after their arrival, one Nandee a Toung-thoo told No. 2, that he had seen two Shans in his village buying elephant's gear. We went after them but not finding them, returned to our village. Some time after this No. 2 came and told me three Shans had just gone into Takra's house and asked me to help to seize them, so I, No. 2 and No. 1 went and seized them, bound them and took them to No. 6's house, after which I went off into the jungles to get some wood-oil, and did not return till after the four Shans had been killed.

Questioned by the court.—When we seized the three Shans I understood them to say they came in search of their own elephant. It was No. 2 who had told me they had stolen *Kauhe's* elephant. They did not confess to doing so in my hearing.

3rd witness.—*Phaé* of Melana in Yabyn (Shan son of Pide) aged nineteen, being sworn deposes.

Seven of us while working in the forest, lost an elephant, which we afterwards found near Yeboo.

Next day one Nandee came and told us he had seen three Shans in his village enquiring for elephant's gear. We immediately set out in pursuit of them but did not find them, that day I went to ramble in the jungle after our return, and coming back home saw Phakloopa talking to three Shans in Takra's house, whom with the help of Nos. 1 and 2, he afterwards seized and took to No. 6's house. We all went there and waited for No. 6's arrival, after which No. 5 went and consulted with No. 6, and presently came and told us we were to kill the Shans. We demurred, but No. 5 said there was nothing to fear, on which Nos. 1, 2, 3 and 4 took off each one of the prisoners bound, to an open space in the jungle, where they were all killed. Each of the prisoners at the bar from Nos. 1 to 4 killed the Shan he held. No one of them cried or begged for mercy, nor tried to escape. They were killed by one stroke of a *dah* on the neck of each. They died with that one blow. Their heads were not dissevered.

Questioned by the court.—I did not hear them confess to stealing the elephant. They were killed by No. 5's order. No. 5 said they were thieves.

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But with respect to the fifth and sixth prisoners, but more especially the fifth, I conceive that the law should be allowed to take its course.

4th witness.—Phakloomee of Melama, son of (unknown) aged eighteen, on oath deposes.

We lost an elephant when working in the forest and found it again near Yeboo. The next day we heard of three Shans having been seen asking for elephant's gear which they wanted to buy. We went after them but did not find them, and so returned to the village. I did not go, but my companions did.

The same day three Shans were seen going into Takra's house. And Nos. 1, 2 and Phakloopa seized and took them to No. 6's house, who on his return home consulted with No. 5 who told us to go and kill the Shans, which was done. The Shans were taken by Nos. 1, 2, 3, and 4 into a small plain or open space in the jungles and there cut down by a blow of a *dah* on the neck of each one. They said nothing. Nor tried to escape. One blow to each killed them.

Questioned by the court.—I did not hear them confess to stealing the elephant, No. 5 ordered them to be killed because they were thieves. It was the general impression they were thieves.

5th witness.—Meechwe of Noundoung widow of Nga Noi aged forty, sworn deposes.

My two sons-in-law Nga Pan and Nga Shwe Lat went to Yahyn with 250 rupees, sword, dagger, clothes and provisions to buy an elephant. This was about two months ago. About twenty days ago I heard from some Shan-traders that my two sons-in-law had bought an elephant and were returning with it when they were killed.

Questioned by the court.—Witness is shown the property of the deceased persons, which was found near their bodies, by the Goung Gyoop when he went to investigate the case, viz., three cotton putsos, three betel-boxes, two bags of rice, one chunam box, two Shan putso, six bags, one blanket, four armlets, one bamboo of salt, one rice pot.

I recognise these three betel-boxes, one chunam pot, three pulsos, one bag of rice, two empty bags to have been the property of both my sons-in-law. The rest of the things I do not recognise.

Witness is then shewn one musket, two long and two short *dahs* which were taken by the Goung Gyoop in No. 6's house, No. 6 having said they belonged to the dead people.

These things I do not recognise, I do not know whose they are.

I do not know of any one else having gone with my sons-in-law. The traders who told me the news of the murders are from Monoo (Shan), they knew my sons-in-law, and they said there were two strangers with them.

My sons-in-law never stole elephants but they have bought them. They purchased one before and this last makes two.

My sons-in-law got the money to purchase this last elephant from Nga Lyt and Nga Ruine, their relations. I do not know who this last elephant was bought from.

I never heard of my sons-in-law having had any quarrels with any of the villagers of Melama, Yeboo, or Tinyalee.

6th witness.—Nga Lyt of Noun Loung, son of (unknown) aged thirty-five, sworn deposes.

Nga Pan and Nga Shwelat lived at my village they went to Yehyn to buy elephants, I do not know what has become of them. I do not know this property or whose it is. Nga Pan took some money to buy elephants. He took 250 Rupees. It was all his own. I gave him none.

Since writing the above, I have received an official report, from the magistrate in charge of the jail, of the death of prisoner No. 4, Kophaw.

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7th witness.—Nga Mine of Noun Loung, son of Senda, aged twenty, sworn deposes.

I knew Nga Pan and Nga Shwe lat, they are my brothers. They were killed by the people of Yeboo. They were returning from the eastward with an elephant and were killed. They borrowed the money to purchase the elephant from Nga Lyt. I know this because Nga Lyt told me himself. He lent them 250 rupees.

6th witness.—Nga Lyt recalled, admits this. "I did lend 250 rupees to Nga Pan and Nga Shwe Lat," I forgot all about it.

8th witness.—Nga Thau of Dolan, son of Kopla, aged fifty, sworn deposes.

The Thoogyee of Dolan (which is two days journey from Yeboo) came and informed the Goung Gyook of the murder and said it had been done by some stranger at Yeboo. So we all set off and came upon Nos. 1, 2, 3, 4 and 5 all sitting together in a house. A Kareen, Nga Owkpan, having pointed them out to us. Nothing was said to them and they said nothing. They were put in irons and examined next morning, when they confessed to having killed the Shans and pointed out the spot to us. We took them there and they described the whole affair, we saw the bodies, but there was nobody with us to recognise them. In fact nothing but ours were left.

The clothes, &c., in court were found scattered about near them.

Before we went to see the bodies we went to No. 6's. The Goung Gyook went inside and brought No. 6 out. I did not hear what No. 6 said.

9th witness.—Nga Owkpan of Paong, son of Kamee, aged forty, sworn deposes.

I was present at the seizure of the prisoners at the bar.

The Dolan Thoogyee Nga Torok first seized Nos. 1 and 2, and the three witnesses Phakloopa, Pahloonee and Pary, and two others and brought them to Moulmein where the Goung Gyook was. (This was about ten days ago.) I came along with the party and the Goung Gyook made us all go back and accompanied us to the prisoners' village. That is, I went as far as my own village Toung-thoo, near Yeboo, and the Goung Gyook went on and seized the rest Nos. 3, 4, 5 and 6 and let the others go, but this was not in my presence.

Says again, I went with the Goung Gyook to Yeboo, where we seized the headman No. 6, who was told to point out his men, which he promised to do. He was put in irons and the next day the Goung Gyoop went off to another wild village and seized the rest of the prisoners Nos. 3 and 4.

Says again, both Nos. 6 and 5 came to Moulmein along with the prisoners Nos. 1 and 2, and were sent back with the rest, No. 5 was kept behind at Dolan where the Goung Gyook went to seize Nos. 3 and 4, No. 6 accompanied Goung Gyook all the way to Yeboo, and was eventually taken in his house.

Opinion by the magistrate.—From the confessions of the prisoners, it appears that No. 1 and 2 belonged to a party at work in the forest, who had lost an elephant. They with others, seized four Shans on suspicion, prisoners Nos. 3 and 4 helping them to do so. The four Shans were then taken to Nos. 5 and 6, the headman of the village and his deputy, who, after a short consultation ordered the captured Shans to be killed, which was done almost immediately after by the prisoners, Nos. 1, 2, 3 and 4 in the presence of eye-witnesses.

The four first prisoners state they acted only by the orders of the headmen, of these No. 5, attempts no excuse: but No. 6 says that the court at Moul-

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Jury.
Mr. Cady,
T. B. Catchick,
J. Gregory,
Adam Saw,
Moung Beo.

Duly chosen by lot and not challenged by the prisoners when asked if they have objections to state to any of the five, make solemn affirmation.

1st witness for prosecution.

Poore Thee of Nelama in Yahine in the Shan territory son of Novee aged about twenty duly sworn. States that he knows the prisoners at the bar, knew the four deceased Shans also, they stole an elephant, we were cutting timber in the Mathalin forest, seven of us altogether. We lost an elephant which belonged to Karohé for whom we were cutting timber, we went in search of it, towards Yeboo; we found it beyond Yeboo, and brought it and gave it up to Kawhi. The day after this a man came and told us that he had met two men at the village of Yeboo to purchase elephant *howdas*, &c., that they were suspected of being elephant-stealers, on this I and four others set out for Yeboo, their names were Thaboo, Roorahé 1st and 2nd prisoners, Phaklobah and Kawhe but could not find them, we went a second time and found one Shan sitting in the jungle, he said his companions had gone in search of an elephant, we seized that man and took him to the house of Nga Tha Yah No. 6, who is headman of our village, we got intelligence of three more Shans and went in search of them Roorahé No. 2, Taboo No. 1, and Phaklobah seized them, and brought them also to the house of Nga Tha Yah No. 6, they were all Shans. I followed them to the house of Nga Tha Yah, who is the headman, he was absent, but soon returned, the Tsokay Phakoo No. 5, then consulted with No. 6, and then told us to take the four Shans and kill them; on which Taboo No. 1, Roorahé No. 2, Dikwah No. 3, and Kophaw No. 4, took them out into the jungles and killed them, I and Phaé and Phaklomee accompanied them and saw the four Shans killed by the four first prisoners, do not know who bound them, but they were killed by having their heads nearly cut off by the blows of the *dahs*. No one held them, they said nothing and made no

mein (meaning the district magistrate's court) had released so many cattle-stealers already that he was determined to secure the punishment of the men now caught.

There is no evidence to shew that the four men killed, had stolen the elephant. On the contrary, it appears they had left their village with a considerable sum to buy one, and the whole affair can appear in no other light than as a flagrant assassination, horrible in its cold-bloodedness and a dangerous precedent in our policy with the savage tribes of the Shan border.

The prisoners Nos. 1 to 4, are convicted of wilful murder and Nos. 5 and 6, with being accessaries before the fact and instigators of the same.

Sentence.—They were accordingly committed to take their trial at the sessions this 11th day of May, 1854.

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resistance, each man received but one blow, and that killed him, they stood up, but were made to bend their heads down. The bodies were left where they were and were not buried. It was about sunset, rather before; we then returned home. On the way we met No. 5, Phakoo, he asked, "Are they dead" we answered "Yes." I heard the Keo Ngatha Yah give the order that the Shans should be killed. I was much frightened when I heard the order given, but felt it must be obeyed. The Tsokay asked the Keo if the four Shans were to be killed, and the Keo said, Yes. I heard this myself and saw them killed. The Keo did not ask the Shans any questions before ordering them to be killed, but Phaklobah asked him on their being seized if the elephant was their property, they said that they had stolen it.

The prisoner and jury have no question to ask.

2nd witness for prosecution. Phaé of Malana in Yabyne, son of Pédi, aged nineteen, a Kareen, duly sworn states—Knows the prisoners, the four first are all of my village, and two last live a little way off, also knew the four Shans who were killed, witness and six others were cutting timber for Kawhé in the Messalee forest, they lost an elephant, went in search of it and found it near Yaboo, next day we heard from a Toung-thoo that a Shan had come to his village to buy elephant's gear, five others went to the village to search for him, he was caught and brought to the village of Yaboo, but I did not see this. I also heard that Phaklobah, Taboo No. 1, and Roorahé No. 2, had seized three other Shans, in the village of Yaboo, on a suspicion of having stolen elephants. They were all taken to the house of the Keo No. 6, Nga Tha Yah, he was absent but soon returned, the Tsokay then went to the Keo, and they had a consultation, but cannot say about what, but the Tsokay came back and said it was the order of Keo that the four Shans should be killed. This order was given to Taboo No. 1, Roorahé No. 2, Dikwah No. 3, and Kophaw No. 4, I heard the Tsokay Phakoo No. 5, give the order, I was sitting quite close, their hands were then bound by Nos. 1 and 2 and Klopaw or Phaklobah and No. 4, after which they were taken out of the village and killed by Taboo No. 1, Roorahe No. 2, Dikwah No. 3, and Kophaw No. 4, they were accompanied by Poorathee 1st witness, Phaklomee and myself, and afterwards Tohaw and Koraon followed. When we got outside the village Nos. 1, 2, 3 and 4, killed the four Shans; they were standing up and made to hold their heads down, when they were struck on the nape of the neck with long *dahs*, which half-severed their heads from their bodies, after that their bodies were left there and we all returned home. They said nothing and made no resistance, each of the prisoners killed a man. Did not hear the Keo No. 6, give any orders for the killing of the four Shans, but the Tsokay No. 5, said that No. 6, had ordered the execu-

1854. tion and that they must accordingly take them and kill them. We were afraid, but were obliged to do it.

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3rd witness for prosecution. Phaklomee resident of Melama, father's name unknown, aged 18, duly sworn, deposes, I know the prisoners, the four first live in the same village with me and the 5th and 6th near to it. I was at Kawhe's house one day about two moon's ago, or in the last moon, when he lost an elephant, a Thoung-thoo came and gave information that a Shan had come into his village to buy a *howdah*. I remained at home, but No. 1 and 4 others went in search of Kawhe's elephant and having found it brought it home again, after which they went and searched for the Shan, they found him, and three other Shans having come into the village of Kawhee at Yeboo, they were seized and all four Shans were taken to the house of No. 6, Keo Nga Tha Yah. I went with them, the prisoners Nos. 1, 2, 3, and 4 had charge of them. The Keo No. 6, was absent, we waited till he came back, the Tsokay No. 5 Phakoo, then went into the Keo's house and they consulted together, after which the Tsokay came out and said that the Keo No. 6, had directed that as the four Shans were bad men, we were to take them away and kill them, in accordance with this Nos. 1, 2, 3 and 4 Tahoo, Roorahe, Dikwah and Kophaw took them to the jungle outside the village, and there killed them. They stood up with their heads bent, and each prisoner killed his man by hitting him on the back of the neck with a long *dah*. They made no resistance and no noise, their arms were tied behind their backs. I heard the Tsokay No. 5, give the order to kill the men, I was quite close, we remonstrated, but he said he would be answerable for any thing, I and the 1st and 2nd witnesses accompanied the prisoners Nos. 1, 2, 3 and 4, and the four Shans to the place of death, the dead bodies were left there unburied, I did not return to the village, I went to Kawhe's house, it was a little before sunset that the murder was done.

The prisoners and jury have no questions.

4th witness for prosecution. Phakloba of Tingallee, son of Khawchaiah, aged thirty, a Karen, having been duly sworn, states: I know the prisoners at the bar Nos. 1 and 2, Taboo and Roorahe and others came to my village in search of Kawhe's elephant which had been lost; they found the elephant, but could not find the thieves, the day after a Toungthoo came and informed him that two Shans had come into their village to buy a *howdah*, on this Taboo, Roorahe, Kawhe myself and 1st witness went off in search of them, not finding them, No. 1, and myself returned; soon after this three Shans came into my village and were seized on suspicion of being thieves, and bound lest they should run away, and I took them

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to Keo Nga Tha No. 6, who is the headman, because I was told that one Shan had already been taken there. On arriving there I found that the Keo was absent, left the Shans at his house and went away, they were in custody of Nos. 1, 2, 3 and 4, they were suspected of stealing elephants. I did not ask them if they had done so, and they did not confess to any thing of the kind in my presence. I could not understand them, but I bound them because others said they were thieves. Did not find any money on them. On returning to my village a little before sunset I met a Toung-thoo who said that he had just been out to see the Shans killed, on this I went to my house, I do not know who killed the Shans or who ordered them to be killed.

Prisoners and jury have no questions.

Prosecution is here closed.

Defence.—1st. Prisoner Taboo, father's name unknown, a Kareen, resident of Melama village, aged about twenty-two being called on for his defence states that what he said before the magistrate is true, four Shans were seized by me and others in the jungles near Yeboo and taken to the house of the 6th prisoner Keo Nga Tha Yah. The Tsokay No. 5, Phakoo then came and consulted with No. 6, as to what should be done with the Shans, and came and told me and Nos. 2, 3 and 4 to take away and kill them as they were elephant-stealers, we remonstrated against this, but the Tsokay said he would be answerable as he was the headman. We were all much afraid to kill them, but we dare not disobey the Tsokay, who said it was also the order of the Keo Nga Tha Yah No. 6; we then took the four Shans out and killed them, they stood up but bent their heads and with long *dahs* we struck them on the back of the neck. I killed one man with one blow. The others did the same. I could not help it. On going home I met the Tsokay No. 5 and he asked me if I had killed them. I said, yes.

2nd prisoner. Roorabe son of Thadoo aged thirty. A Kareen resident of Melama village, states that what he said before the magistrate is true. I and others went in the last moon, I think, and seized in all four Shans in the belief that they were elephant-stealers, took them to the house of Keo Tha Yah who is headman of the Toung-thoos in the British territories, he lives at Yeboo, which is in the English jurisdiction after that Tsokay came and consulted with the Keo and then told us that the Keo had ordered that they should be killed, so I and Nos. 1, 3 and 4, took them outside Yeboo village and killed by hitting them on the back of the neck with a long *dah*, I killed one man with one blow, and then returned home. Met the Tsokay on the way home. He asked if the Shans were killed, I said they were, on this the Tsokay returned

1854. home. I killed the Shan because I was ordered by the Tsokay, I would not have done it but for that.

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3rd prisoner. Dikwah son of Theeukpoo, a Kareen aged fifteen states that what he told the magistrate is true, has nothing else to say now. I did not, but others seized four Shans and took them to the Keo Nga Thayah's (No. 6) house, I was not there at first but went afterwards, the Tsokay went and consulted inside the Keo's house, and then came out and said that the Keo had ordered that they should be killed, we remonstrated, but the Tsokay said, Never mind, I will be answerable. We then took the Shans out and killed them, I killed one because I was ordered by the head of the village to do so. I did not wish of my own will to do it, but was afraid to disobey the Tsokay's order. When returning met Tsokay No. 5, who asked if we had killed them, we said, we had.

4th prisoner. Kophaw resident of Melama, father's name unknown, a Kareen aged eighteen, states that what he told the magistrate, is quite true, and he has nothing else to say. The four Shans were caught by others and made over to me and the three first prisoners to be taken to the house of Keo Nga Tha Yah No. 6, we took them there. The Keo was not at home, so we waited till he came home. The Tsokay Phakoo No. 5, then went into the house of No. 6, and had some conversation with him, after which he came out and ordered me and Nos. 1, 2 and 3, who were guarding the Shans to go and kill them, we remonstrated against this, but Tsokay said he would be answerable, so not to mind. The Keo was in his house and did hear this, he may have been fifty paces off. The Tsokay said the Keo ordered that we should kill the Shans, we then took them outside the village and killed them by striking them on the back of the neck, with long *dahs*, they stood up and bent their necks and with one blow we killed them, I killed one man, the three others did the same, we left them there and went back to the village of Yeboo; on the way we met the Tsokay No. 5, who asked us if we had killed the men, we said we had, on which he said, Do not be afraid, I will be answerable for this matter. The Shans said nothing and made no resistance. I killed one because I was ordered to do so by the Tsokay. I had no wish to kill any one.

5th. Prisoner Phakoo, son of Tokee, a Kareen aged forty-three. Tsokay of Kettooroay village states that what he told the magistrate was all quite true and has nothing more to say now. My village is not under the Keo No. 6, it is under the Goung Gyouk Moung Shoay Kee, and is in the Company's territories, as is the place where the four Shans were killed. It was in the last moon that four Shans were seized because they stole elephants. They stole Kawhe's elephant, they had also often stolen before, so we caught them, and asked them if they had stolen Kawhe's elephant

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and they acknowleged it, and confessed to having stolen several other elephants, I then ordered them to be kept, and took them to the house of the Keo Nga Tha Yah, and when he returned I went into the Keo's house and asked him what should be done with the four Shans, he said it was not advisable to keep them, that they should be killed, and we agreed that as they were in the habit of stealing elephants they should be killed. I then ordered my lads Taboo, Roorahe, Dikwah and Kophaw to kill the Shans and they did so; Taboo did not kill, he has only come here as the agent of another who ran away; he belongs to my village, but he is not one of those who had charge of the four Shans, nor did I order him to go and kill them, he has been instructed to say that he killed one of the Shans but he did not. The three other prisoners also said that Taboo was one of the murderers because they were instructed so to do, and I told the magistrate so also, because I ordered Taboo to take the men and kill them: I did tell Taboo to take the men and kill them, and he took them, and afterwards said he had killed a man, but last night Taboo told me he was not the man who killed a Shan, Keo Nga Tha Yah No. 6, told me to have the Shans killed, they were constantly stealing elephants, and we could not bear it any longer, so killed them. If they had been brought to Moulmein the authorities would only imprison them for a year or two, and at the end of that time release them when they would return to our village and either shoot us or spear us, so I thought it best to kill them at once, and they were killed. I am an ignorant man and have nothing to say.

6th Prisoner, Nga Tha Yah, Keo of Yeboo, father's name unknown, a Toung-thoo aged thirty-eight, states I am a servant of the British Government, I am under the Goung Gyouk Moung Shuay Kyee of Dah Gyne and Shine boay. The Shans who were brought to my house four in number in the last moon were said to be elephant-stealers, they had been stealing before, I did not see them, nor did I speak to them, but the people who came with them, Phakoo and his people, said they were thieves, so I told them to do with them just as they pleased. Phakoo proposed to kill them, I told him to do as he liked with them; I do not know what he did with them, next morning I heard that they had been killed. I did nothing on hearing this, I then went and called the Tsokay to go with me to the Goung Gyouk, and next day Phakoo and myself and another Tsokay went and told the Doolan Thoogyee of what had happened. I told Phakoo to do as he pleased with the Shans, but I did not mean that he should kill them. I collect the revenue of Yeboo, but I am not regularly the headman, because I have no document to that effect. Yeboo is in the British territories; my elephant was stolen and because I could not find the thief I was fined seven rupees. I

1854. omitted to tell Phakoo to take the thieves (deceased) to Moulmein, Phakoo said he would kill them, I said, Do as you please.

July 27. The defence is closed.

Case of TABOO and others.

Verdict of the jury.—The jury find the prisoners guilty of the charges against them.

Opinion and sentence of the court.—In this verdict I concur, the first four prisoners are decidedly guilty of having murdered the four Shans, names unknown, at the village Yeboo, and the 5th and 6th prisoners Phakoo and Nga Tha Yah, both persons of some little authority, are guilty of having been accessary to the murders and having instigated the first four to commit them; indeed it is established that it was by their orders that the four Shans were killed.

I therefore sentence, all the prisoners Taboo, Roorahe, Dikwah, Kophaw, Phakoo and Nga Tha Yah to *suffer death*, but I recommend the first four to mercy in consideration of the youth and inexperience of three of them* and all having acted by the instigation and directions of the two last.

* Nos. 1, 3 and 4.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The particulars of this case are very fully recorded by Captain Tickell, the magistrate, and also by the commissioner of the Tenasserim Provinces.

The prisoners Nos. 1, 2, 3 and 4, the last since dead, were the actual perpetrators of the murder under the orders of prisoners Nos. 5 and 6, men of some authority in the village.

The four persons murdered were from the Shan territory and were charged with stealing an elephant, when taken before prisoners Nos. 5 and 6. No investigation appears to have taken place before them as to the truth of the charge preferred by the other prisoners.

Prisoners, Nos. 5 and 6, having ordered the Shans to be killed, the order was at once executed by the first four, each taking his man and cutting off his head with one blow.

The commissioner, in his letter of reference to the address of the Secretary to Government, convicted all the prisoners in concurrence with the jury and recorded his opinion that sentence of death should be passed upon them. He however recommended the prisoners, Nos. 1, 2, 3 and 4, to mercy in consideration of the youth and inexperience of three† of them and of all having acted by the instigation and direction of Nos. 5 and 6, and proposed to sentence them to fourteen years' imprisonment with labor and irons.

† Nos. 1, 3 and 4.

All the papers connected with the trial were sent to this Court under cover of letter from the Secretary to Government, dated 23rd June, No. 2773.

We concur with the commissioner in the conviction of the prisoners, Nos. 5 and 6, on the charge of instigating and direct-

ing the murder of the four Shans. They both confessed the fact before the magistrate.

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No. 5, repeated his confession in the sessions court, No. 6, somewhat varied his, but admitted, that when No. 5 told him the Shans should be killed, he answered, Do what you please with them.

Both these prisoners are men in office and must be held responsible for the murder which was committed under the sanction of their assumed authority, for ignorance of duty on this point has not been pleaded by them. We concur in passing sentence of death, as proposed by the commissioner, on the prisoners, No. 5, Phakoo and No. 6, Nga Tha Yah.

The recommendation of a mitigated sentence on the prisoners, No. 1, Taboo, No. 2, Roorahe, and No. 3, Dikwah, on the ground of youth and inexperience is not borne out as regards the prisoners, Nos. 1 and 2, who are reported to be respectively of the ages of twenty-two and thirty years. Prisoner No. 3, is said to be only fifteen years of age. All of them, however, appear to have acted, as though under the impression of being authorized to execute the orders given them by the headmen of the village. The ignorant and half civilized state of the people may plead for mitigation of punishment in their case. We sentence them accordingly to (14) fourteen years' imprisonment with irons and labor.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges*.

Bhaugulpore.

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Case of SOOKHOO PASBAN and others.

LALLA SAHOO AND GOVERNMENT,

versus

IN TRIAL NO. 2.—SOOKHOO PASBAN (NO. 4,) MOHUR (No. 5,) PREM (No. 6,) HURREEHUR ROY, (No. 7,) AND HURREEHUR CHAMAR (No. 8,)—IN TRIAL NO. 3. —RUJJUN DHANOOK (No. 30.)

The evidence for the prosecution being considered under the circumstances untrustworthy, the prisoners were, on appeal, acquitted.

CRIME CHARGED.—*In trials Nos.* 2 *and* 3.—1st count, burglary and theft of property, valued at Rs. 397-4-3; 2nd count, having in their possession stolen property, knowing at the time the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—Having in their possession stolen property, knowing the same to have been obtained by burglary and theft.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

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——
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Case of SOOKHOO PASBAN and others.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th April, 1854.

Remarks by the sessions judge.—Prisoners plead *not guilty.* The burglary took place in the house of Peearalal, master of Lalla Sahoo, prosecutor; a hole was made in the wall of the room, where the property was kept, and the thieves got off with their booty undiscovered; they were met, however, towards morning by witness, No. 1, who was going out to his field and who questioned them, when they answered that they were going to their own homes from the village of Goura; witness, No. 2, was watching in his *kullean* and tells nearly the same story. Witnesses, hearing of the burglary, related the circumstance of having seen and questioned prisoners and of their having with them *pelaras* and other things, to Peearalal, who accordingly preferred his charge, procured the search of prisoners' houses, and discovered portions of the stolen property, as set forth in form A on record in the *misl.* The robbery took place on the 26th February, the charge and search on the 27th.

Witnesses 1 and 2, knew all the prisoners before, saw them on the night of the robbery at a suspicious hour proceeding from the direction of prosecutor's house with loads. They also deposed to the finding and identification of the property as per form A. Witnesses Nos. 3 and 4 depose to finding property in prisoner's house as per form A, and also to the description of the burglarious entrance into prosecutor's house.

Prisoner, No. 4, denies the charge, says that the case is got up against him, claims the *lotah* and *thalee* and *turban* found in his house as his own, says Peearalal has got up the case against him, because he could not find Rujjun prisoner; that Peearalal had beaten and ill-used him from the same cause; has no witnesses to these facts.

Prisoner, No. 5, son of the above, makes much of the same defence, says Peearalal placed the rice bundles in his house changing them for some smaller ones that were there before; has no witnesses, except as to character.

Prisoner, No. 6, denies, says Peearalal beat him to make him confess; that the case is got up against him; that the property found in his house was put there on purpose to criminate him; has no witnesses to the fact.

Prisoner, No. 7, denies participation in the theft, says the necklace, No. 16, found in his house belongs to his daughter; that prosecutor did not mention it in his first list of stolen property given at the thannah; that the cloth, No. 17, found in his house, is his own, has no witnesses to these facts.

Prisoner, No. 8, denies the theft, says the *dhotee*, No. 15, found in his honse, is his own, has no witnesses, except as to character.

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Case of Sookhoo Pasban and others.

Prisoner, No. 30, of case No. 3, denies the theft, says the gold ring, No. 13, found in his house, is his own, has no witnesses.

The witnesses to character are generally favorable to the prisoners.

The jury bring in a verdict of guilty of the 2nd charge against all the prisoners, in which, I concur.

The prisoners have not attempted to prove the facts set forth in their defence. In the case of No. 8, the property found in his house (an old *dhotee* No. 15) would not in itself be sufficient to convict, but the evidence of witnesses, Nos. 1 and 2, as to all the prisoners being seen together on the night in question at a suspicious hour with suspicious property in their possession, while some of the stolen property clearly capable of accurate identification, and not such as would be in the houses of men of prisoners' state of life, is next morning found in the houses of some of the same party, is quite convincing to my mind of the guilt of all. I convict them, therefore, in default of any direct evidence as to the burglary itself, of having in their possession stolen property knowing the same to be stolen, and sentence Sookhoo, No. 4, as being a chowkeedar, though of a different Muhella, to five years' imprisonment, with labor in irons, the other prisoners, Mohur (No. 5,) Prem (No. 6,) Hurreehur Roy (No. 7,) Hurreehur Chamar (No. 8,) of calendar (No. 2,) and Rujjun Dhanook (No. 30,) of calendar (No. 5,) to three years' imprisonment, with labor in irons, and jointly and severally to pay a fine of Rs. 372-1-3, under Act XVI. of 1850, as shewn in the statement.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) There is much reason to doubt the truth of the evidence in this case and the honesty of the prosecution.

The two witnesses Nos. 1 and 2, who are said to have given the first clue to the robbers, are evidently identified with the prosecutor and form in fact almost the only evidence in the case.

It is remarkable that they should have been the first to suspect the prisoners, then to recognize the property and to have been made witnesses to its recovery as described by the sessions judge, nor can we understand when the prisoners were apprehended the very next day, how it was that so little of what is alleged to have been stolen (nearly 400 Rs.,) was recovered. We acquit the prisoners and direct their release.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

West Burdwan.

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Case of

KHITOO DASS BURNICK.

The prisoner who had evaded justice, was on apprehension convicted.

GOVERNMENT AND ROMUN BANERJEA,

versus

KHITOO DASS BURNICK.

CRIME CHARGED.—Wilful murder of Damoodur Banerjea, brother of the prosecutor Romun Banerjea, by blows of a *lattee* and *tangee* on the 17th November, 1853, corresponding with 3rd Aghran 1260, B. S.; 2nd count, riotously assembling for the purpose of causing a breach of the peace regarding some disputed crops and wounding Damoodur Banerjea with a *lattee* and *tangee* on the abovementioned date from the effects of which the aforesaid Damoodur Banerjea died on the same night; 3rd count, with being an accessary before the facts mentioned in the 1st and 2nd counts.

CRIME ESTABLISHED.—Aiding and abetting in the culpable homicide of Damoodur Banerjea.

Committing Officer.—Mr. T. Tucker, magistrate of Bancoorah.

Tried before Mr. P. Taylor, sessions judge of west Burdwan on the 18th May, 1854.

Remarks by the sessions judge.—Full particulars of this case, in which the prisoner was concerned will be found at pages 107 to 110 of the Nizamut Reports for the month of January, 1854. He was not at that time to be found, but was apprehended at his own house, as per notice given to the darogah of thannah Chatna by a chowkeedar on the 10th Chyte, 1260, B. S.

His defence was *alibi*, but the witnesses adduced by him in support thereof, were not to be credited in face of the direct and positive evidence, of his having been aiding and abetting in the culpable homicide of Damoodur Banerjea, which was again given before the joint-magistrate and this court, by the eye-witnesses almost in the same terms as before.

The *futwa* of the law officer was one of *tazeer*, on the ground of *shirakut*, participation of the prisoner in the "wilful murder" of the deceased, Damoodur Banerjea.

As I considered the evidence of his having been aiding and abetting in the "*culpable homicide*" of that individual, as proven before the Nizamut Adawlut, full and legal. I so far concurred in the opinion expressed by the law officer and sentenced the prisoner as noted below.

The words "wilful murder" appeared in the *futwa*, instead of "*culpable homicide*," in consequence of the accidental non-acquaintance of the law officer, with the order passed by the Nizamut Adawlut in the case of Hurree Roy and others.

Sentence passed by the lower court.—Six years' imprisonment with labor in irons in the zillah jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The prisoner was named in the former trial as aiding and abetting. There is nothing adduced now to invalidate the evidence for the prosecution. We reject the appeal.

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Case of KHITOO DASS BURNICK.

PRESENT:

T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

KALLY BEWA AND GOVERNMENT,

versus

RAJCHUNDER BORA (No. 1,) AND KOYLASH CHUNDER CHUCKERBUTTY (APPELLANT No. 2.)

Jessore.

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Case of KOYLASH CHUNDER CHUCKERBUTTY.

The prisoner was acquitted on the insufficiency of the evidence against him.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutrix named Kally Bewa and plundering therefrom property valued at Rs. 48-13-9, on the night of the 25th February, 1854, corresponding with 15th Phalgoon, 1260, B. S. and 2nd count, prisoner, No. 1, also with knowingly receiving part of the plundered property obtained by the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 10th April, 1854.

Remarks by the sessions judge.—On the night of the 25th February, four men forcibly entered plaintiff's house, one of them hit her sister's son, (Kinnoo) a child, on the head.

The sister gave up all the ornaments, which were upon her own and her children's limbs, to save herself and her children from further outrage. One of the men also hit plaintiff, with an offensive weapon, over the temple. The four men carried off plaintiff's boxes into the verandah, where they were joined by two others who helped them to convey it to the cow-house, where they rifled the contents, valued at Rs. 48-13-9, and went off eastward in the direction of prisoner, No. 2, Koylash Chunder's house.

Neighbours* came up and hearing plaintiff say that she had recognized the voice of prisoner, No. 2, and the gang had gone eastward, they went in pursuit. When they arrived

* Witness No. 1, Basur Meena.
,, ,, 2, Futeek Gaeen.
,, ,, 4, Mrittunjoy Ghose.
,, ,, 5, Anund Ghose, and others.

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at the garden near his house they saw him coming from the south, panting.

On being asked* if he had seen the dacoits he denied. The neighbours went on and found four men, who started off on hearing their voices, and left† a bundle.

Witness No. 1, Basur Meena.
2, Futeek Gaeen.
13, Jan Mamood.

† Witnesses Nos. 1, 4, and 5.
10, Takoorbur Dass.
15, Ketabde.
16, Sekunder Seikh.

They could not overtake these men, but they espied two others, one of whom rushed into the house of Koylash Chunder, and the other prisoner No. 1, Rajchunder fell into a ditch and was caught.§

§ Witnesses Nos. 1, 2, 4 and 5.

The bundle aforesaid proved to contain property which is identified as belonging to plaintiff.

Rajchunder confessed in the mofussil and named prisoner No. 2.

Koylash Chunder was seen that evening, before the dacoity, in company with three or four others.

The prisoner denied before the magistrate and in this court, but there is no evidence to exculpate them.

I consider that they are both proved guilty of the crime of dacoity, and sentence them each to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin.) The only evidence, against the prisoner appealing, is an assertion of the prosecutrix that she heard his voice among the robbers, and that he was afterwards seen near his own house by the villagers in a disturbed state. This is not sufficient to bring the charge home to him, we therefore acquit the prisoner.

PRESENT:

J. DUNBAR, Esq., *Judge*.

SHIBOO GHOSE AND GOVERNMENT,

versus

HARADHUN DOME CHOWKEEDAR.

West Burdwan.

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Case of HARADHUN DOME CHOWKEEDAR.

The prisoner, a chowkeedar, was convicted of burglary and sentenced by the sessions judge to 4 years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, burglary on the night of the 27th May, 1854, corresponding with the 15th Jysto, 1261, on the premises of the prosecutor's master Bishunath Chatterjee, by cutting a hole in his *morai* or granary and stealing therefrom paddy valued at 4 Rs. 8 annas; 2nd count, knowingly receiving and having in his possession property acquired by the above burglary.

CRIME ESTABLISHED.—Burglary in the house of the prosecutor's master, Bishunath Chatterjee, by cutting a hole in his *morai* or granary and stealing therefrom paddy valued at 4 Rs. 8 annas.

Committing Officer.—Mr. F. Tucker, joint-magistrate of Bancoorah.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 30th June, 1854.

Remarks by the sessions judge.—Witness, No. 1, Soonder Dome Chowkeedar, stated before the sessions court, that having heard a dog bark in the *baree*, or enclosure, of the prosecutor's master's house at about ½ past 12 o'clock, he went to it and saw, from a certain *gullee* or lane, that thieves had entered it; that he, thereupon, proceeded to the house of the witness, No. 3, Ram Chund Chatterjee, whom, with Mohesh Dome Chowkeedar witness, No. 2, he found sleeping; that he told them what had occurred and took them with him to the spot, that through the *khirkee* or women's door, they saw the prisoner and four or five other thieves, inside; that the latter, among whom deponent recognized Shookhdeb Dome, the prisoner's brother, with Juggernath and Dhurmo Domes, ran out and got off; that the prisoner, who had a *goon*, or sack, with some *dhan* in it in his hand, threw it away and putting his foot on the top of the *morai*, or receptacle of paddy, sprung up on the wall of the *barree*, from which he ran backwards and forwards, on the *chuppurs* of the huts, until he fell off at a corner into a ditch, when deponent seized him; that Mohesh and Ramchand then came up and assisted in securing him; that witnesses 4, 5 and 6, and others, then arrived; that he was sent to give notice at the thannah, &c.

When examined by the thannah mohurrir he told nearly the same story, but affirmed that the prisoner had the sack *under*

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Case of HARADHUN DOME, CHOKEEDAR.

his arm, when taken, and that he had heard the trampling of feet, before the dog barked. He stated to the joint-magistrate that the night was *dark;* that no one could say to whom the sack belonged; that the houses of the persons whom he had recognized were searched without result, and that the *morai* was close to the *khirkee* door. When questioned by the court, he declared that there was nothing wonderful in three *maups* (or twelve maunds) of paddy (the quantity lost) having been carried off, while he was on his beat; that the prisoner *threw down the bag when he was seen;* that the prisoner and he were connected; that his brother, the witness Mohesh, No. 2, had married the daughter of the prisoner's brother-in-law, and that there was a quarrel between them, because the woman was not allowed to take her abode with Mohesh; notwithstanding this he affirmed, that he bore the prisoner no ill-will. The evidence of the other witnesses supported the above statements, but they were not agreed as to whether Soonder, witness, No. 1, at once named the other persons, whom he said he had recognized, or *not, and Gopeenath, No. 5, affirmed that the prisoner had, on seizure, offered the said Soonder four or five rupees to let him off, and sent one Tonoo chowkeedar to his house, for the money, but without result. No other witnesses knew any thing of this transaction, nor did any one of them mention Tonoo, as having been among the persons present. Mohesh chowkeedar, witness, No. 2, denied having slept at Ramchand's house, and insisted on his having been on his beat with his brother, No. 1. He also of his own accord stated that the prisoner *was a chowkeedar when he committed the robbery*, that it was a *moonlight* (he afterwards said *starlight*) night, and that he had recognized Sookhdeb, Juggo and Dhurmo Domes, as well as Soonder. The evidence of the cut state of the *morai** and that of the premises was sufficient and the general ditto shewed, distinctly, that the Dome and chowkeedar witnesses, the prisoner, and the persons said to have been recognized in his company, all belonged to the same *dul* or society, though the quarrel, about Mohesh's wife, had raised enmity between that individual, and Soonder and the prisoner.

The defence of the latter was, that he had been seized *at about 4 in the morning of the 16th Joystee*, by the said two witnesses in the village where the robbery occurred, when on his way to the temple of Bydnath, on pilgrimage; that he had been beaten, rifled and falsely accused of the deed by them, and that the cause of such conduct on their part, was the quarrel that had taken place about Mohesh's wife. His witnesses supported every part of his statements, *except his seizure and maltreatment*, which they did not see.

* Sic in original.

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The law officer convicted the prisoner of *burglary, buzunighalib*, or on violent presumption, and declared him liable to discretionary punishment. He at the same time remarked that although there was much in the case which led him to suspect that the chowkeedars, Soonder and Mohesh, witnesses, Nos. 1 and 2, had been accomplices in the crime, and that they had spitefully managed to throw the whole weight thereof upon the prisoner, by pretending to catch him as soon as they had taken as much paddy as they wanted, such possible conduct on their part could not vitiate the evidence of his having committed the burglary, which was afforded by the record.

As I was entirely of the same opinion, I convicted the prisoner of the burglary, on violent presumption, and as he was a chowkeedar, sentenced him as noted.

The opinion formed by the law officer and myself was based on the facts that three *maups*, or twelve maunds of paddy had been carried off; that the alleged recognition of Sookhdeb and others, by Soonder, was apocryphal; that the residence of the chowkeedars was only six or seven *russees* distant; that Soonder, evidently lied in regard to his being alone when he discovered the burglary; that enmity (though perhaps concealed) on the part of the chowkeedars, towards the prisoner, certainly existed; that his story was quite improbable and unsupported in the most essential particulars by his witnesses; that he said nothing about it when apprehended, and that the disinterested witness, Ramchand, No. 3, had seen him running backwards and forwards on the *chuppurs*, of the prosecutor's *baree*, before he fell and was seized and the others came up.

The paddy was restored to the prosecutor and the sack confiscated.

I at the same time ordered that the suspicion of complicity and treachery, attaching to the chowkeedars, Soonder and Mohesh, should be brought to the joint-magistrate's notice.

Sentence passed by the lower court.—Imprisonment with labor and irons for four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) There is reason to think that Soonder and Mohesh chowkeedars had knowledge of the intended burglary and theft beforehand, and that they so managed as to make a capture of the prisoner in the presence of Ramchand Chuttopadya, a neighbour, but the strong probability of their complicity does not alter the facts. The prisoner was secured, just as he jumped down, with eighteen seers of paddy in the bag, and was found in the hands of his captors by a number of the villagers, who came to the spot immediately, attracted by the noise. The story of the prisoner cannot avail him, he says, he had been ill, and was proceeding on a pilgrimage to the temple at Bydnath, when he was seized, but he does not shew, that he, being chowkeedar of a

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neighbouring village, had got leave of absence; or how at midnight he came to be on the premises of the prosecutor, to which he could not have been taken without much noise and outcry, if brought by compulsion. The Court reject the appeal and confirm the sentence.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT,

versus

TAJOO SHEIKH (No. 1,) AND JAMAL BISWAS (No. 2.)

Nuddea. 1854. July 28. Case of TAJOO SHEIKH and another.

One prisoner convicted of the murder of his brother was sentenced to death. Held that assisting to bury the body of deceased, did not, under the circumstances, constitute the second prisoner an accessary after the fact.

CRIME CHARGED.—Prisoner No. 1, wilful murder of Suntosh Sheikh, and prisoner No. 2, accessary after the fact.

Committing Officer.—Mr. J. E. S. Lillie, magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 7th July, 1854.

Remarks by the sessions judge.—The prisoner Tajoo Sheikh is son of the prisoner Jamal, and they are respectively the brother and father of the murdered man Suntosh Sheikh.

The principal witness in this case is Burkut Beebee, wife of the deceased Suntosh. On the night of Saturday the 13th May, (1st Jeit) she slept inside of the house with her children, her husband went to sleep on the yard *(oothan)* in front; about two and half *pahur* or two in the morning, Burkut hearing guttural cries went out; she saw Tajoo Sheikh close to her husband with a *dao* in his hand, saw her husband lying, with his lower lip and chin and teeth smashed and with his throat cut. Tajoo ran off a little distance but presently after returned. Burkut called to her father-in-law Jamal, and both Jamal and Tajoo, she said, forbade her making a noise or proclaiming thereby the murder. In the course of the night several persons came and saw the body. Towards morning a grave was dug, and about sunrise, or shortly after, the body of Suntosh was buried.

In the course of the night Rumzan Sheikh (father of Burkut Beebee) Badul Sheikh (brother-in-law of Suntosh) Sohagee, and Burkut Sheikh saw Suntosh lying dead with the wounds above described, Khoodee also saw him lying dead and bloody.

The witness Suroop Sheikh, Mokeem (a cripple) and Nusseerooddeen were called to be present at the burial of Suntosh.

Keenoo and Bhagye were present when Tajoo pointed out the *dao*, which Burkut Beebee swears he had in his hand at the time of the murder.

Molung and Aslut were present at the disinterment of the body of Suntosh on Tuesday the 16th May. The body was

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swollen, but they observed what they believed to be cuts or stabs in the throat, and they saw also that several of his lower teeth had been broken.

Such is a statement of the evidence given in this court, in itself sufficient for the conviction of the prisoners, and I have now to state the circumstances that affect its credibility.

The murder was attempted to be concealed: not till the evening of Sunday was the attention of the principal people of the village excited. It is stated by the witnesses Molung, Aslut and Gungagobind that on that evening, in their hearing, Burkut charged Tajoo with murdering her husband, and that they caused Tajoo to be seized and sent to the thannah by the chowkeedar.* On Monday the 15th the chowkeedar and Tajoo appear to have arrived at the thannah. There the charge of murder was not reported. Tajoo said his brother had been ill† and died towards the close of the day preceding (Sunday,) and that in rolling about he had torn or wounded his cheek; the chowkeedar‡ said that towards the close of Sunday hearing cries he went and saw Suntosh lying dead with his two cheeks torn as if they had been scratched. Upon this information the mohurrir was sent to enquire; the disinterred body presented marks of violence, suspicion of murder was bruited, the darogah himself followed to investigate the case, and by him, on the 17th May, the deposition of Burkut Beebee, charging Tajoo with the murder, was recorded.

* Huree Ghose.

† With some disease of the urinary organs.

‡ The chowkeedar, on 19th May, said to darogah he had not seen the body at all when he went to thannah.

On the 17th May, the body when submitted to the inspection of the civil surgeon was in an advanced stage of decomposition. The magistrate failed to bring to Dr. Archer's notice the alleged cause of death, and Dr. Archer noticed only marks of constriction under the ears. He states that the throat of the deceased might have been cut, though the mark of wounds did not fall under his observation.

The prisoner Tajoo said Suntosh died from sickness and that the charge of murder had been got up; he adduced no witnesses.

The prisoner Jamal said he was awoke in his sleep by his grandson who called him to see his father; prisoner went and saw Suntosh lying with injuries on his teeth and lip, and what looked like stabs on both sides of his neck; Suntosh said God had struck him. This prisoner also summoned no witnesses.

The two jurors who sat with me pronounced the case not proved, but I am unable to agree in their verdict, I cannot allow the attempt made by the prisoner to conceal the crime, to controul and in fact cancel the evidence available, both as to the injuries sustained by the deceased and to the detection of Tajoo, it may be said, in the act of inflicting them. The brothers had a dispute about a certain sum of money which Suntosh said he

1854. should try to recover a share of, Wait till morning, said Tajoo, before you do that.

July 28.

Case of TAJOO SHEIKH and another.

I would convict Tajoo Sheikh of the wilful murder of Suntosh Sheikh, but it appears to me to be one in which the sentence of death should not be passed. However complete my conviction of the guilt of the murderer, I think it is more wise not to put the prisoner to death, not because he is a fit subject for mercy, but because the judgment conscious of its fallibility is most satisfied with a sentence not utterly irreparable.

I would convict Jamal Biswas as an accessary after the fact and sentence him to three years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and B. J. Colvin).—The proof is sufficient to convict the prisoner Tajoo, of the wilful murder of his brother Suntosh. There was a quarrel between the brothers regarding the produce of their land, for which Tajoo had received some money and refused to give Suntosh his share.

The witness, Burkut Mussulmanee, wife of the deceased, has stated that she saw the prisoner commit the murder with a *dao* and *koralee*, the prisoner's *dao* stained with blood and a bloody mat and some cloth were found in his house; the blood-stains on these articles he accounts for by saying that he had used the *dao* to kill a goat. The circumstances, however, which in our opinion add further confirmation to Burkut's statement are, that wounds and injuries similar to those she says were inflicted on her husband, were observed on the corpse by the witnesses whose depositions are on record, leaving no doubt that Suntosh did *not* die, as asserted by his relatives, the prisoners, a natural death. The anxiety of Tajoo and his father to bury the body before any information of the death reached the thannah, is another ground for presuming that the woman's statement is correct. Coupling these circumstances with the varying statements made by Tajoo, to account for the death, and his admissions that the body did bear the marks of violence described by the witnesses, we see no ground to doubt his guilt, and seeing no extenuating circumstances to justify a more lenient sentence, we adjudge the prisoner, Tajoo, to suffer death.

No knowledge of the murder, either previous to or at the time of its commission, is shown against the prisoner Jamal; and the mere circumstance of his assisting to bury the body in the open and public manner, in which the interment took place, is not sufficient to convict him as an accessary after the fact. We therefore order his release.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

BHOGOBAN DOOLEY (No. 1), ISSUR GHOSE ALIAS DAYDO ISSUR GHOSE (No. 2), NOBIN GHOSE (No. 3), BHOOBUN SIRDAR (No. 11), SEEROO SIRDAR (No. 12), KASINATH CHUNG (No. 13), HULLODHUR TEOR (No. 15), MODHOOSOODUN CHUNG (No. 16), AND SEEROO CHUNG (No. 22).

Hooghly.

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Case of BHOGOBAN DOOLEY and others.

Prisoners charged with dacoity, and with having belonged to a gang of dacoits, acquitted.

CRIME CHARGED.—1st count, dacoity in the house of Shamachurn Mookhopadhey at Dadpore, on the night of the 28th July, 1843, in which property to the amount of Rs. 442-12 was plundered; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 22nd April, 1854.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and are charged firstly, with dacoity, and secondly, with having belonged to a gang of dacoits. They plead not guilty to the indictment.

The witnesses marginally noticed,* three of whom are approvers on the establishment of the dacoity commissioner, prove the charge against the prisoners. They detail the particulars of the dacoity committed in the house of Shamachurn Mookerjee of Dadpore, on the night of the 28th July, 1843, showing the prisoners' complicity therein, and mention several other instances in which they took part in dacoities committed at different times and in different places.

* Witnesses Nos. 1, 2, 3, 6 of calendar No. 1.

The witness mentioned in the margin† proves the fact of the dacoity charged.

† Witness No. 4, of calender No. 1.

The prisoners deny the charge and impute malicious and vindictive motives to the approvers in giving evidence against them. They call witnesses to character, but the testimony does not avail them.

The approvers' evidence convicts the prisoners of both counts of the charge, and that evidence is supported by the detailed confessions made by the witnesses, when first apprehended and charged. These confessions are verified by the records of the

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several magistrates, in whose districts the admitted dacoities took place, and shown to have been recorded under circumstances which precluded all possibility of collusion between the confessaries. The proof against the prisoners, therefore, is complete and I would recommend that they be sentenced to transportation for life.

Resolution of the Presidency Court of Nizamut Adawlut.—No. 508, dated the 1st June, 1854. (Present: Messrs. A. Dick and B. J. Colvin.)

The Court, having perused the papers above recorded connected with the case of Bhogoban Dooley and others, observe that the prisoner Issur Ghose alias Daydo Issur Ghose, has stated in his defence in the sessions court that he was in jail in Hooghly, at the time of the dacoity in the house of Shamachurn Mookerjee on the 28th July, 1843; this point has not been enquired into. The Court therefore direct that the proceedings be returned to the officiating additional sessions judge, who will take evidence on the point, and after taking, if necessary, a fresh defence from the prisoner, re-submit them with his report on the point in question, without delay.

In reply to the above resolution the following letter No. 86, dated the 26th June, 1854, was submitted by the officiating additional sessions jndge.

I have the honor to acknowledge the receipt of the Court's resolution No. 508, of the 1st instant, and in reply to transmit herewith, in original, for the Court's consideration and orders, a letter* from the commissioner for the suppression of dacoity

* From the commissioner for the suppression of dacoity to the officiating additional sessions judge of Hooghly No. 220. dated 23rd June, 1854.

I have the honor to acknowledge the receipt of your letter No. 78, dated the 9th instant, with accompanying copy of a resolution of the Court of Nizamut Adawlut in the case noted in the margin.*

* Government *vs.* Bhogoban Dooley. Issur Ghose alias Daydo Issur Ghose. Nobin Ghose. 1st count, prisoners are charged with having committed a dacoity in the house of Shamachurn Mookhoopadhay at Dadpore, on the night of the 28th July, 1843, in which property to the amount of Rs. 442-12 was plundered; 2nd count, with having belonged to a gang of dacoits.

I called Issur Ghose before me and asked him to name any witnesses he might desire to cite before you. In reply he stated that he did not wish to produce any, but that the fact of his having been in jail, on the 28th July, 1843, the date of the Dadpore dacoity could be proved from the jail and magistrate's office records. It had been further brought to my notice that the approver witness Rutton Chundul was in the Hooghly jail on that date. I immediately directed the deputy magistrate, Baboo Chunder Seekur Roy, to proceed to the jail and to the magistrate's office to ascertain from the books and records, the truth of these assertions. I regret to state that both appear to be quite correct. Issur Ghose was in jail on the 28th July, 1843. Rutton Chundul was also in jail on that date.

The latter has been called on to state why he gave a deposition regarding

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together with the papers which accompanied it, just received, relative to the case of Issur Ghose alias Daydo Issur Ghose.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) Read a letter No. 86, of the 26th ultimo, from the officiating additional sessions judge of twenty-four pergunnahs, in reply to this Court's resolution No. 508, of the 1st idem, also a letter No. 220, of the 23rd ultimo, from the commissioner for the suppression of dacoity.

In this case ten prisoners (one is now dead) were committed by the deputy magistrate under the dacoity commissioner, charged 1st with committing a dacoity at Dadpore on the 28th July, 1843, and 2nd with having belonged to a gang of dacoits.

The additional sessions judge, who tried the case, convicted all the prisoners, remarking that the approver evidence convicts the prisoners of both counts of the charge, and that evidence is supported by the detailed confessions made by the witnesses when first apprehended and charged. These confessions are verified by the records of the several magistrates in whose districts the admitted dacoities took place, and shown to have been recorded under circumstances which precluded all possibility of collusion between the confessaries. The proof against the pri-

the Dadpore dacoity when he was not present at it. He states that though not present he was acquainted with the facts of the dacoity, because the members of his gang had been concerned in it, and he had heard the circumstances from them. The real cause of the false statement was this, Rutton Chundul had all along refused to become an approver. He was called up with three others of the gang to be committed for trial for the Dadpore dacoity, and when called upon by the deputy magistrate to plead guilty or *not guilty* to the charge, he then, for the first time, pleaded guilty and begged to be allowed to become an approver. He must have known then that he was charged with this dacoity by the former approvers, and he accordingly from fear of contradicting them acknowledged to having been concerned in it. I would solicit that the whole of his statements be not rejected for this one falsehood. As I am informed by the deputy magistrate that in numerous other dacoities, the facts detailed by him correspond in a remarkable degree with the facts deposed to have occurred by parties who witnessed them, and that they are of such a description that no one except a person present and taking part in the dacoity could have known them.

The deputy magistrate appears to me to have made a mistake in this commitment, in framing the 1st count for a dacoity which occurred so many years ago, that it is hardly possible that the approvers could have a good and clear recollection of the members who formed the gang on that occasion.

The deputy magistrate requests me to add that previous to the commitment he had called upon the *mohafez* of the Hooghly foujdary court to give in a statement, shewing the dates of arrest and imprisonment of all the defendants committed, and that those lists were given in and did not contain any allusion to the fact of either Issur Ghose or Ruttun Chundul having been in jail on the dates on which it now appears they were.

In conclusion I have the honor to forward to your court *Issur Ghose*, and copies of the jail and foujdary records alluded to in this letter.

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soners therefore is complete, and I recommend that they be sentenced to transportation for life.

The case first came before Messrs. A. Dick and B. J. Colvin, who, observing that the prisoner Issur Ghose had alleged in his defence before the sessions that at the time of the dacoity at Dadpore, specified in the charge, he was incarcerated in the Hooghly jail, which the sessions judge had not enquired into, returned the proceedings to him for enquiry on this point.

The additional sessions judge has forwarded to the Court a letter from the dacoity commissioner (see note) detailing his proceedings in this matter.

From this letter it appears that both Issur Ghose, prisoner No. 2, and Ruttun Chundul, the *approver* witness No. 2, were in the Hooghly jail, on the 28th of July, 1843, the date of the Dadpore dacoity. This man Ruttun Chundul had been accused by former approvers of being concerned in this dacoity, which he denied on the 6th March, but being arraigned on the charge, he pleaded guilty on the 8th idem in order to turn approver, and as such gave evidence against the prisoners now before us.

The approver witnesses, who have given evidence in this case regarding the Dadpore dacoity, are *Madhob Das*, *Ruttun Chundul* and *Nemye Nikaree*. They relate the particulars of the robbery and Madhob and Rutton identify all the prisoners and the approvers, while Nemye only names his two fellow-approvers and Nos. 1, 2 and 3 prisoners. From the fact that Issur Ghose and Rutton Chundul were at the time in the Hooghly jail, there can be no doubt that Ruttun Chundul's evidence must be altogether rejected as false, and Madhob's and Nemye's assertions that these two men were among those who committed the robbery must be regarded as equally incredible. The dacoity commissioner gives no explanation of these approvers' mis-statements, and accounts for Rutton Chundul's false implication of himself and Issur Ghose as arising from a desire to become an approver himself, and fearing to contradict the other approvers who had accused him and Issur Ghose of being concerned in the dacoity.

While these proceedings were before us, the Government pleader, Sumbhoonath Pundit, requested to be heard on the part of Government and in support of the conviction. He urged that the approvers' statements are to be taken *generally*, and that if the evidence be not considered sufficient against the prisoners, he wished the case to be remanded for further proof. The pleader argued that owing to lapse of time and other circumstances, the approvers may have mis-stated something connected with a dacoity which had occurred long ago; that the details as given by the police of the specific dacoity in this case coincide precisely with the statements of the approvers, and that the record will show that the prisoners, now before the Court, were always suspected of being concerned in the dacoity with which they are now charged.

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We have already adverted to the extent to which the evidence of the approvers Madhub and Nemye appears to us to be compromised, by the proof of the falsity of Ruttun Chundul's statement and the truth of Issur Ghose's *alibi*. With respect to the effect of those facts on the rest of their evidence, and the value of their testimony generally, as advocated by the Government pleader, we think the following remarks are applicable.

It appears to us that although the dacoity commissioner considers it necessary to produce corroborative evidence of the actual occurrence of a particular dacoity, the circumstances of which are communicated by the approvers, he deems the statements alone of these men sufficient as to the identity of all those named by them, and expects the courts to receive them as conclusive on that point without any confirmatory proof to support them. For this reason great stress is laid by the dacoity commissioner on the precautions invariably taken to prevent the possibility of combination and collusion amongst the confessaries, and it is supposed that if, under such circumstances, the statements of the approvers corroborate each other as to the incidents of the dacoity, every confidence may be placed in their veracity, as to the accomplices whom they name.

We think there might be such a combiniation of circumstances, as would fully justify a court of justice in receiving the evidence of approvers alone, as conclusive on this point, but in every instance the *result* of such circumstances should be so self-evident as to be beyond question. But adverting to the circumstances of this case and to a similar one, which came to the knowledge of this Court on the trial of Kettur Kowra and others, acquitted on the 20th ultimo, there is, we think, too much reason to believe that combination and collusion is far from impossible under the present system, for in no other way can we account for what has transpired in this case. Here we see that Ruttun Chundul has been able to detail *all* the particulars of a dacoity as given by two other approvers, and to name those present as named by one or the other of them; though it is known *now* that he was not himself implicated. Again the approvers Madhub and Nemye, both accuse two men who at least are innocent of the particular crime at Dadpore imputed to them, their mutual adoption of this untruth, and Rutton Chundul's corroboration of their accounts of the robbery are coincidences quite irreconcilable with a reasonable belief in the infallibility of the dacoity commissioner's arrangements for preventing all communications between those who confess.

With the above circumstances before us, we consider it would be most unsafe to rely on the evidence of the approvers in this case, in the absence of any confirmatory proof affecting the identity of the prisoners Nos. 1, 3, 12, 11, 13, 15, 16 and 22. The prisoner No. 2, Issur Ghose is entitled to his acquittal on the

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alibi reported by the additional judge. We see no reason to remand the case as regards the other prisoners, for we find that on the record the only evidence against them is the mention of their names by the approvers as accomplices with them, and no further evidence of the confirmatory nature to which we have already adverted, is adduced, we therefore acquit them also. Regarding the 2nd charge against the prisoners that of having belonged to a gang of dacoits, we remark that the approvers mention a number of dacoities, besides the one at Dadpore, in which they allege the prisoners were concerned with themselves.

We have not gone into this part of the evidence bearing on the prisoners, because we think it would be unfair to expect them to defend themselves against so many specific accusations on one general charge of this nature. The particular dacoities in which they are supposed to have participated must be *charged* and proved.

The acquittal of these men will not therefore affect the legality of any further proceedings the local authorities may think necessary to adopt, to bring them to trial on charges arising out of any other dacoities alluded to by the approvers, not forming the specific ground of charge in the present indictment.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

THANDARAM PODAR AND GOVERNMENT,

versus

KALACHAND DARIA (No. 22,) TILUCK MUNDUL CHOWKEEDAR (No. 23,) AND MONIRAM KUR GOMASHTA (No. 24.)*

Jessore. 1854. July 31. Case of KALACHAND DARIA and others.

Prisoner convicted of the wilful murder of his wife, sentenced capitally. The Chowkeedar who had been committed for privity to the murder, was acquitted,

CRIME CHARGED.—1st count, prisoner No. 22, wilful murder of Malocho Chundalenee, the daughter of the plaintiff Thandaram Podar during the night of the 20th May, 1854, corresponding with the 8th Joistey 1261, B. S. and 2nd count, prisoners Nos. 23 and 24. privity to the above murder.

Committing Officer.—Mr. A. J. Jackson, joint-magistrate of Khoolneah.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 12th July, 1854.

Remarks by the sessions judge.—The deceased Malocho having refused to sleep with the prisoner No. 22, a quarrel arose between them and the latter beat her in the first part of the night, but being reproved† by witnesses, he ceased to do so. Subsequently, at the hoarse cries of the deceased, Pitumber came out of his

† Witness No. 1, Pitumber.
" " 2, Foolmala.
" " 14, Mojoomdar Boyragee.

* Released by the sessions judge.

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Case of KALACHAND DAHIA and others.

room and called witnesses Nos. 14 and 17. Pitumber opened the door and witnesses* saw the above prisoner sitting beside the lifeless body of his deceased wife, on the bedding. The prisoner at that time confessed† that he had strangled the deceased, and the witnesses retired to their respective homes. The prisoner afterwards took the body of the deceased and suspended it by a string round the neck on a tamarind tree that stands near the house of witness No. 14.‡ The prisoner No. 22, and witness No. 14, carried the body to the house of the witness Pitumber. It was seen then§ that the genitals of the deceased were swollen and that there were marks of a cord on the neck. The prisoners Nos. 23 and 24, as also other persons of the village, assembled at the house of witness No. 6.|| On being questioned the prisoner No. 22¶ first declared that the deceased died by hanging herself, but subsequently voluntarily confessed that he murdered her with his own hand. The gomashta Moniram (prisoner No. 24,) forwarded the prisoner No. 22 with the chowkeedar (prisoner No. 23) to the thannah with a report of these statements, but the chowkeedar withholding the *kyfeut* given by the gomashta, represented* to the darogah that the deceased had died by hanging herself. The darogah held an inquest† marks of strangulation and injury to the *pudenda* were apparent. The body was then forwarded to Khoolneah where the native doctor‡ examined the corpse; he deposes that there were marks of a rope round the neck and the appearance of a stick having been forced into the private parts, but he could not examine minutely as the body was decomposed. The Noabad darogah having proceeded to hold an investigation, the prisoner No. 22 voluntarily confessed having murdered his wife, suspended her to a tree and removed the corpse to Pitumber's house.§ Prisoner No. 23 pleaded guilty to having concealed his knowledge of the murder and to having given false information to the darogah to screen prisoner No. 22.

his offence being only punishable as neglect of duty.

* Witness No. 1, Pitumber.
,, ,, 14, Mojoomdar Boyragee.
,, ,, 17, Bungshee Boyragee.

† ,, ,, 1, Pitumber.
,, ,, 14, Mojoomdar Boyragee.
,, ,, 17, Bungshee Boyragee.

‡ ,, ,, 2, Foolmala.
,, ,, 10, Aradhun.
,, ,, 14, Mojoomdar Boyragee.
,, ,, 17, Bungshee Boyragee.

§ ,, ,, 2, Foolmala.
,, ,, 10, Aradhun.

|| Kunkun Biswas.

¶ Witness No. 3, Lalchand.
,, ,, 5, Joynarain.
,, ,, 6, Kunkun.
,, ,, 11, Mojoomdar Boyragee.
,, ,, 21, Koobir.
,, ,, 25, Casheenath.

* Witness No. 9, Ashek.
,, ,, 18, Fukir Mahomed.
,, ,, 19, Poran also confession of prisoner No. 23.

† ,, ,, 1, Pitumber.
,, ,, 10, Aradhun.

‡ ,, ,, 13, Calechurn.

§ Witness No. 3, Lalchand.
,, ,, 5, Joynarain Biswas.
,, ,, 6, Kunkun.

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These prisoners having been forwarded to the joint-magistrate's court acknowledged* having made the above confessions and again confessed the above charges. These confessions are duly attested by the subscribing witnesses and proved to have been voluntarily given.

* Witness No. 15, Haracally.
,, ,, 16, Ramtonoo.

The prisoners Kalachand and Tiluck now deny having made the confessions before the darogah or the joint-magistrate, and raise objections to them. But these are not at all worthy of credit. For prisoner No. 22, has confessed even in this court that he struck one or two blows on the deceased, but declares that the deceased, on receiving the blows went to the house of Pitumber, witness No. 1, and that certain villagers, Rajchunder, Heramun, Kenny, Groochurn, &c., recommended she should remain there. He contradicts himself, however, by asserting that Pitumber, witness No 1, and Mojoomdar Boyragee, witness No. 14, brought the dead body of the deceased into Pitumber's house.

The objection raised by prisoner No. 23, that he confessed the 2nd charge being intimidated by the darogah, is also inadmissible. For he does not even here deny that he was aware that deceased was murdered at the village, of which he is the chowkeedar, and he does not profess to have informed the darogah of this.

Both these prisoners said they did not wish any witness to be examined in their defence.

The signature in the *kyfeut*, bearing the name of prisoner No. 24, filed with the *nutthee*, totally differs from the signatures of that prisoner in his answers filed in the foujdary and in this court.

None of the witnesses state that prisoner No. 24 wrote the *itlahnameh* filed at the thannah by the chowkeedar. On the contrary witnesses for prosecution† and defence‡ exculpate the gomashta and shew that the chowkeedar, prisoner No. 23, played false and withheld the report which the gomashta had given when sending the murderer, prisoner No. 22, in custody of the chowkeedar, prisoner No. 23, to the thannah.

† Witness No. 6, Kunkun.
,, ,, 8, Joynarain Boyragee.
‡ ,, ,, 21, Koobyr.
,, ,, 25, Cashinath.

The jury give a verdict against prisoner No. 22 of "guilty of count 1st," against prisoner No. 23 "guilty of count 2nd," against prisoner No. 24, *not guilty*.

I concur in this and have directed the release of Moniram Kur.

I consider prisoner No. 22 guilty of wilful murder and see no reason why he should not suffer the full penalty of the law.

Tiluck Mundul, being a chowkeedar and having knowingly withheld the report entrusted to him by the gomashta and

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given false information, in order to conceal the criminal, I would sentence him to seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Mr. H. T. Raikes.) The confessions of the prisoner Kalachand at the thannah, before the magistrate and in the presence of those who reached his house shortly after the crime was committed, are full and complete as to the fact of his having strangled his wife with his own hands. But we are not prepared to adopt his version of the story as to the cause of the murder; the deposition of the native doctor, who examined the body and describes its appearance after death, raises a strong presumption that the prisoner had used the girl in a cruel and brutal manner before he took her life and the probability of such treatment is confirmed by the account given by prisoner's relatives of the girl's previous unwillingness to remain with him. The aggravated features of the case allow of no other than a capital sentence on the prisoner, and we therefore adjudge him to suffer death.

The prisoner Tiluck Mundul is entitled to his acquittal; his concealment of the crime as chowkeedar of the village is only punishable as neglect of duty, and does not connect him with the murder perpetrated, of which, at the time it was committed, he had no personal knowledge whatever. We direct his release.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

SHEIKH GHOOLAB AND GOVERNMENT,

versus

TUMEEZOODDIN (No. 2,) BEENUD (No. 3,) AND KHOAZ ALI (No. 4.)

Tipperah.

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Case of TUMEEZOODDIN and others.

Three prisoners, who had evaded arrest for some time, were convicted of aid-

CRIME CHARGED.—1st count, aiding and abetting in the wilful murder of Aynuddin alias Anoo son of the prosecutor; 2nd count, aiding and abetting in the wounding of Mahomed Amir, and 3rd count, riot attended with the murder of Aynuddin and wounding of Mahomed Amir.

CRIME ESTABLISHED.—Aiding and abetting in the culpable homicide of Aynuddin.

Committing Officer.— Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 28th March, 1854.

Remarks by the officiating sessions judge.—The circumstances attending this case are detailed in full by the late sessions

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ing and abetting in culpable homicide and sentenced to different terms of imprisonment.

Appeal rejected.

judge, Mr. H. C. Metcalfe, in his report dated the 28th March, 1853, with reference to the trial of Pakaoollah* and others. The riot originated in the interference of the zemindar's agents and people, who forcibly prevented the prosecutor's son and those with him from cutting their crops which had been attached by the zemindars.

In the affray which ensued the deceased, Aynuddin, met his death, as proved by the clearest evidence, by the thrust of a *Rae Bans* from the prisoner Pakaoollah who was sentenced by the Court to a term of ten years' imprisonment with labor in irons, the other prisoners then under trial were sentenced to various terms of imprisonment, and three were acquitted, the wound of Mahomed Amir was inflicted by an unknown hand in the middle of affray.

The three prisoners, whose cases are now reported, were proved by the fullest evidence to have been personally engaged in the riot; the first, Tumeezooddin, as a principal giving orders, and the two others to have been with him and engaged in the riot. These three prisoners absconded immediately after the occurrence, and did not make their appearance near their former abode until nearly a year had elapsed, when, it may be presumed, they had deemed, that the first sensation created by the case had subsided, and the strictness of search abated. They were on their re-appearance, however, arrested by the police and immediately sent in to the sudder station.

The defence set up by the prisoners Tumeezooddin and Beenud was, that they were, at the time of the occurrence of the affray, absent from their homes at a village called Khellerbund in the Mymensingh district; the third prisoner declared in his defence, that he had been kept at the zemindar's cutcherry all that day, and that he had, on being released, left the country on account of inability to pay the rent due by him. The evidence adduced to prove the *alibi* failed entirely, as the witnesses for the defence spoke to trifling occurrences as having taken place on a particular date a year before, a statement which considering the generally very loose retention of dates by the lower orders of natives generally, could not be considered worthy of confidence. The facts, therefore, sworn to by the witnesses to the affray could not be invalidated by such testimony, nor could the prisoners account with any degree of probability for their prolonged absence from their homes without any ostensible cause, and commencing immediately after the occurrence of the affray in which they were so clearly proved to have been engaged.

In concurrence with the *futwa* of the law officer, I sentenced the prisoner Tumeezooddin, as a principal, to be imprisoned for a

* See page 529, Nizamut Adawlut Reports for April, 1853.

term of five years with hard labor in irons, and the two remaining prisoners, Beenud and Khoaz, as having been concerned in the affray, respectively to three years' imprisonment, and to pay a fine of 50 Rs. the fine to be paid within fifteen days, in failure of such payment to labor in irons.

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Case of TUMEEZOODDIN and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) The prisoners were all named by three of the witnesses now examined and by others, as having been concerned in the riot, when the depositions were first taken in the mofussil a few days after the occurrence; they then absconded and now attempt to prove *alibi.* The evidence for the defence, however, is vague and untrustworthy, as compared with that for the prosecution which has been clear and consistent throughout. The Court see no reason to interfere with the sentence, which is accordingly confirmed.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*

GOVERNMENT,

versus

TARACHAND GHOSE ALIAS TARA ALKOOSHEE (No. 1,) ISHUR GHOSE GOWALLA ALIAS ISHUR MACHNA (No. 2,) MUDDUN GHOSE GOWALLA (No. 3,) BHOOLOO GHOSE (No 4,) BUNSHEE JALLAY (No. 5,) ISHUR KOORME (No. 6,) RAJOO MUSSULMAN (No. 7,) NOBIN KARRAH (No. 8,) ISHUR BHUR (No. 9,) AND TONOO GHOSE GOWALLA ALIAS TONOO KHANDA (No. 10.)

Hooghly.

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Case of TARACHAND GHOSE and others.

CRIME CHARGED.—1st count, having committed a dacoity in the house of Tonoo Joogee at Habibpore, on the night of the 28th February, 1851; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate under the commissioner for the suppression of dacoity. Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 24th April, 1854.

Prisoners charged with dacoity, and with having belonged to a gang of dacoits, acquitted.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and are charged firstly, with dacoity and secondly, with having belonged to a gang of dacoits. They plead *not guilty* to the indictment.

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* Witnesses Nos. 1, 2, 3 & 4. The witnesses* marginally noticed, prove the charge against the prisoners. The first is an approver on the establishment of the dacoity commissioner and the rest are confessing dacoits, whom it is intended to make approvers. They detail the particulars of the dacoity committed in the house of Tonoo Joogee of Habibpore, on the night of the 28th of February, 1851, showing the prisoner's complicity therein, and mention several other instances in which they took part in dacoities committed at different times and different places.

† Witnesses Nos. 5 and 6. The witnesses† mentioned in the margin prove the fact of the dacoity charged.

The prisoners deny the charge and impute malicious and vindictive motives to their accusers. They call witnesses to character, but the testimony does not avail them.

The evidence for the prosecution convicts the prisoners of both counts of the charge, and that evidence is supported by the detailed confessions made by the witnesses when first apprehended and charged. These confessions are verified by the records of the several magistrates, in whose districts the admitted dacoities took place, and shown to have been recorded under circumstances which precluded all possibility of collusion between the confessaries. The proof against the prisoners therefore is complete, and I would recommend that they be sentenced to transportation for life.

The prisoners Ishur Ghose Gowalla, alias Ishur Machna, No. 2, and Tonoo Ghose Gowalla, alias Tonoo Khanda No. 10, of the calendar were not put on their trial owing to severe indisposition.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The prisoners are charged first with dacoity at Habibpore in February, 1851, and secondly with belonging to a gang of dacoits.

Four witnesses are named in the calendar to prove the charges; they are all approvers.

Two of them Nemaie and Ruttun Sirdar were also approvers in the case of Bhogban Dooleah and others, committed for dacoity at Dadpore. The grounds on which their evidence was discredited, the fact of Ruttun having been in jail at the time of that dacoity, though he criminated himself and another prisoner also in jail at Hooghly with him, are fully set forth in our judgment of the 29th instant. In that case reference is also made to another case Ketter Cowrah and three others, disposed of on the 20th June last, by Messrs. Dick and Dunbar, in which one of the prisoners was, as well as one of the approvers who accused him, at Allipore, in jail, on the date of the occurrence of the dacoity charged in the indictment.

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We have pointed out what we consider requisite to be adduced in support of the evidence of approvers, in the case of Bhogban Dooleah. In this case we find the same approvers brought forward without any confirmatory proof of their evidence as against the prisoners on trial in the dacoity with which they are charged; we hold that some proof independant of that afforded by their own allegations may reasonably be demanded on a prosecution of this nature, and that the mere imputation of convicted persons unsupported by other circumstances leading to a probability of the truth of their assertions is insufficient. No such circumstances affecting the identity of the prisoners are to be found in this record, save the depositions of the approvers; there is no proof whatever connecting the prisoners with the dacoity named; we therefore acquit the prisoners of that charge.

Upon the second charge of belonging to a gang of dacoits, we observe that the same approvers have sworn to the complicity of the prisoners in several other cases of dacoity which they have specified. We have not gone into this part of the evidence on this second charge, as we are of opinion that it is too general to admit of the prisoners defending themselves. Some specific dacoity or dacoities must be charged and proved, before the Court, upon the principle laid down in their decision of 25th October, 1852, can convict the party of having belonged to a gang of dacoits within the meaning of Section 1, Act XXIV. of 1843. This acquittal will not therefore in any way affect future proceedings against the prisoners, should they be instituted by the local authorities, with reference to the cases adverted to by the several approvers in their *ikrars*. The prisoners are acquitted and must be released.

The objections which we took to the evidence for the prosecution in the cases cited, which was founded upon the distrust of the statements of the approvers, consequent on the failure of the efforts of the authorities to prevent communication between parties admitted to give evidence as approvers, are of equal force in this case.

PRESENT:
J. DUNBAR, Esq. *Judge.*

MUSST. MOHORUM AND GOVERNMENT,
versus
SHEIKH SEFATOOLLAH.

Mymensingh.

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Case of SHEIKH SEFATOOLLAH.

Prisoner convicted of culpable homicide, sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Wilful murder of Sheikh Boodeeah.
CRIME ESTABLISHED.—Culpable homicide.
Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.
Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 8th June, 1854.

Remarks by the sessions judge.—On the 28th Chyte last, the deceased went to a *beel* to fish and having brought home a large quantity, he desired his wife (the prosecutrix) to distribute them among the neighbours. He then went to a *hât* in company with the prisoner, who was distantly related to him. Deceased's wife accordingly gave the prisoner's wife a portion of the fish, but in the evening the latter returned it saying she had not received enough, when a quarrel took place between the two females, deceased's wife having charged the prisoner's wife with having returned only half of the fish given to her. The deceased and the prisoner returned from the *hât* at nightfall, when prisoner's wife related to her husband the quarrel that took place in the day between herself and deceased's wife. Prisoner then began to use abusive language towards deceased's wife, the prosecutrix, and attempted to strike her with a bamboo which he took with him from his house (they lived near each other.) Her husband, the deceased, reproached the prisoner for his unmanly conduct towards his wife, a female, when the prisoner became enraged and assaulted deceased with the *lattee*, which knocked him down and caused bleeding from the mouth and nostrils, and he continued insensible and speechless till his death. The assault was witnessed by witnesses Nos. 1, 2 and 3.* The civil assistant surgeon deposed to death having been caused by fracture of the skull, that the scalp was also severely bruised, and that these injuries must have been produced by one or more blows with some heavy instrument such as a *lattee*, and that though he might have survived two or three days such an injury might be followed by immediate death. The prisoner in the thannah, the foujdary and this court admitted having struck the deceased, but states, that at midnight deceased witness No. 1, and others came to his house and quarrelled with him on account of the fish, so he struck a blow with a *sooparee*

* Haree Khan.
Musst. Molouvee.
Musst. Roopee.

lattee, but he could not say on whom it fell, as it was a dark night. The witnesses whom he examined, however, knew nothing of the deceased and others attacking his house at midnight as alleged.

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The *futwa* of the law officer convicts the prisoner of culpable homicide in which I concurred. This is a bad case. The deceased's wife made a present of some fish to the prisoner's family, and in return for such kindness, her husband was so severely assaulted that he died from its effects. I considered it therefore necessary to punish the prisoner to the extent of my power.

Sentence passed by the lower court.—Imprisonment with labor and irons for the period of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present Mr. J. Dunbar.) In his petition to this Court, the prisoner admits having struck the deceased, but says, it is clear, that he did not do so with intent to kill him, otherwise he would have died on the spot. Had the intent to kill been proved on the evidence, the prisoner would have been liable to the punishment of death. The Court, concurring in the conviction, see no reason to interfere with the sentence passed by the sessions judge.

SUMMARY CASES.

PRESENT:

H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

MUSST. ASSOOKIE,

versus

RUNGAI DOOM (No. 1,) AND KHERA DOOM (No. 2.)

Assam.

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Case of RUNGAI DOOM and another.

Under the Assam rules, it is not necessary for the deputy commissioner to refer a case of rape to the Nizamut, if the punishment which he proposes to award, is within his own competence.

CRIME CHARGED.—Rape on Musst. Assookie.

Committing Officer.—Mr. J. W. Masters, joint-magistrate of Golahghat, zillah Seebsaugur.

Tried before Brevet Major J. Butler, officiating deputy commissioner of Assam, on the 17th June, 1854.

The following letter No. 65, dated the 17th June, 1854, was submitted by the officiating deputy commissioner.

The prosecutor states, that on the 7th Magh, 19th January, 1854, about 3 P. M., having purchased some earthen-ware pots, *kulsees* and *sorais* at Koomargaun, she was returning to her house, when the prisoners on the west side of Salmara Jan, in a secluded spot on the road, seized her and threw her down on the ground. Khera Doom drew her clothes over her face and holding her hands, Rungai Doom committed rape on her person, afterwards in the same manner Khera committed rape on her person. She and Musst. Belengee and Musst. Dohori, who accompanied her, cried out, but the prisoners paid no attention to their crying. At this time Sutram and Dhunniram going to perform coolie work at Noomolee Ghur came up to her, when the prisoners left her and ran away, Musst. Belengee and Musst. Dohori accompanied her and saw the whole affair, and the remaining two persons (Dhunniram and Sutram) afterwards saw what happened. She has never been married, nor has she ever cohabited with any man. She has had the courses for two years past, and has had no friendship or knowledge of the prisoners. She was polluted by the prisoners, but no blood flowed from the rape committed on her. Musst. Doporu and Musst. Sokoru saw the marks and state of her body and Musst. Belengee and Musst. Dohori were also witnesses to her condition. Her house is one *dund* distant from the place where the rape was committed. By Dhunni's mentioning prisoners' names, she knew them and again recognized them after the rape.

Musst. Belengee, 1st witness for prosecution.—Musst. Belengee states that last Magh, she does not recollect the date, on Thursday, about 3 P. M., she and Musst. Dohori, in company with the prosecutrix were returning from Koomargaun, having purchased earthen ware, to her home, when Rungai and Khera Doom prisoners joined them on the road west of the Salmara stream and seized hold of Musst. Assookie prosecutrix and

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threw her on the ground and, covering her face with her clothes, both of them committed rape on her person. She standing close by, saw them commit the rape, and on account of the prosecutrix and herself making a noise and crying, Rungai Doom with the back of a *dao* gave her, the deponent, a blow on the back, which intimidated them to remain quiet, a little after Dhunni and others came up, and seeing them, the prisoners fled. Rungai struck her and she has no recollection of having said before the magistrate who struck her.

Musst. Dohori 2nd witness for prosecution.—Musst. Dohori gives evidence to the same purport as Musst. Belengee. She saw both prisoners commit rape alternately on the prosecutrix Musst. Assookie, they cried out and made a noise, but on Rungai striking Musst. Belengee with the back of a *dao* on the back, they remained quiet, and on two persons coming up to them, who were going to Noomolee Ghur to serve as coolies, the prisoners fled.

The prosecutrix has not been married, about a year ago the courses came on, she has no acquaintance with or affection for the prisoners, living in the same village with prosecutrix she can affirm this. She saw prosecutrix's clothes after the rape smeared with semen and blood, but she does not know that prosecutrix's person was examined by any women in the village; after the rape she went to her house and deponent went to bathe.

Dhunni, 3rd witness for prosecution.—Dhunni states that on Thursday about 3 P. M. on the 7th Magh, corresponding with the 19th January, he with Sutram was going to Noomolee Ghur to work as coolies. They saw the prosecutrix and two girls followed by the two prisoners going towards the Salmara Jan or stream. A little afterwards on their setting out, hearing a noise near the stream, they quickened their pace, when he saw on the west side of the Salmara stream on the road, Khera Doom committing rape on the person of Musst. Assookie and Rungai Doom was holding her hands and keeping her down on the ground. On this, the prisoners fled, and the prosecutrix, Musst. Assookie, told him that Rungai had first committed rape on her. Does not know whether she was married or had any children, or had any previous acquaintance or familiarity with the prisoner, for he lives at Otgaon, and prosecutrix at two *puhars* distant from his at Adhar Gossein's Shuster, he saw prosecutrix's clothes wet and her body smeared with dirt after the rape, and he went to his village, and does not know whether women examined prosecutrix's person. The prosecutrix's house is distant two calls from the place where the rape was committed, and prisoner's house is distant one *dhôl*, or as far as a drum can be heard from the place where the rape was committed.

Sutram, 4th witness for prosecution.—Sutram gives the same

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evidence as Dhunni, he previously knew the prisoners and saw Khera Doom committing rape on the person of Musst. Assookie, prosecutrix, whilst Rungai was holding her down on the ground, and heard from her that Rungai had previously committed the same act of violence on her person. On their approach the prisoners fled.

Musst. Sokoree, 5th witness for prosecution.—After the rape was committed, the prosecutrix went to her house and cried, and being a near neighbour, she saw her clothes smeared with semen, but she was not lacerated or bleeding.

Musst. Leralee alias Doporeanee, 6th witness for prosecution.—Hearing prosecutrix crying on returning to her house, she went to see her and became acquainted with the circumstances of the case, she saw that her clothes were smeared with semen, as is usual on cohabiting, but she was not lacerated or bleeding.

Defence.—The prisoners Rungai Doom and Khera both deny the charge, and in their defence plead an *alibi*.

No. 7, Sadee witness for defence.—One day in the morning, does not recollect the date, in Magh, he and others went with prisoners to Thora Mookh to cut wood, and in the evening returned to our respective homes, knows nothing more.

No. 8, Netae witness for defence.—In Magh, about 27th last, on Thursday, in the morning, the defendants went to fetch wood from Thora Mookh, and he went to catch fish, and in the evening with the prisoners went to their respective homes.

No. 9, Kollia Mooa witness for defence.—In the middle of Magh last, cannot specify the date, he heard from some Doom women that it was Thursday, he went to bring wood from Thora Mookh and returned home in the evening.

Opinion of the officiating deputy commissioner.—By the Assam civil rules, section 1, para. 10, cases of rape have generally been disposed of by the deputy commissioner, but by Reg. XVII. of 1817, section 6, para. 3, the heinous crime of rape, sessions judges have been directed to refer the trial to the Court of Nizamut Adawlut for the sentence of that Court, and under the impression that this is the right course to be pursued, this case is submitted to the Sudder Court.

From the evidence adduced it appears that the prosecutrix Musst. Assookie, an unmarried girl, about fifteen years age, was returning to her home with some earthen ware from Koomargaon with Musst. Belengee and Dobaree, when in a secluded spot on the road, at about 3 P. M. in the day, the prisoners joined them near Salmara Jan and laid hold of Musst. Assookie and threw her down on the ground, Khera Doom No. 2, prisoner drew her clothes over her face, and holding her hands, Rungai Doom No. 1, prisoner committed rape on her person, and in the same manner by the aid of No. 1, prisoner hold-

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ing the prosecutrix down, Khera Doom committed rape on her person. This is established by the evidence of four witnesses. Two witnesses depose to the state the prosecutrix was in, on examination after she returned home bitterly crying at the treatment she had met with.

The prisoners plead *not guilty* and in their defence urge an *alibi*.

The evidence of their witnesses in their behalf does not in any way extenuate their guilt.

The jury find them guilty of the charge of rape, and the joint-magistrate concurs in this verdict.

Verdict.—After mature consideration of the whole proceedings, I have no doubt of the guilt of the prisoners; both committed a brutal and violent rape, and I see no extenuating circumstance in their conduct to merit a slight punishment, I beg therefore to recommend that they be each sentenced to (7) seven years' imprisonment in irons with labor in banishment.

Resolution of the Nizamut Adawlut, No. 653, *dated the 7th July,* 1854.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) The Court, having had before them the proceedings connected with the trial of Rungai Doom and Khera Doom, and adverting to the officiating deputy commissioner's remark that "by the Assam rules section 1, para. 10, cases of rape have generally been disposed of by the deputy commissioner, but by Reg. XVII. of 1817, section 6, para. 3 in the heinous crime of rape the sessions judges have been directed to refer the trial to the court of Nizamut Adawlut, for the sentence of that court, and under the impression that this is the right course to be pursued, this case is submitted to the sudder court," observe that section 1, para. 10, of the rules referred to, provides that a sentence up to seven years or a fine not exceeding 500 Rs. may be passed by the commissioner in all cases of affrays and *other offences*, and as the crime of rape is not specially excluded from his jurisdiction, as it is in the regulation provinces from that of the sessions judges, the Court consider the practice of the Assam courts, when deeming the sentence of seven years sufficient punishment for the crime, to pass sentence on the offenders is correct, and as the officiating deputy commissioner has recommended in this case a sentence within his competence to pass, they direct that the case be returned to him, and that with reference to the above remarks, he award the punishment he thinks adequate to the offence.

PRESENT:

A. DICK, Esq.,

SIR R. BARLOW, BART., AND H. T. RAIKES, Esq., *Judges.*

JOYKISHEN MOOKERJEE AND ANOTHER, PETITIONERS.

Hooghly.

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Case of JOYKISHEN MOOKERJEE and another.

It was held that a zemindar is bound by the law to nominate a village chowkeedar; and that the order of a magistrate imposing a fine on a zemindar for not nominating, is a criminal trial from which a special appeal lies to the Court.

It was also held that there is no penalty prescribed in the law by which a magistrate can punish a zemindar for not appointing a chowkeedar.

In an application for review of judgment, it was held that though the reasons for their decision given by two or more judges may dif-

The petitioners in this case appealed against an order of the magistrate of Hooghly, dated 22nd July, 1853, under which they were fined 50 rupees for refusing to appoint a chowkeedar within their zemindary, on which the following judgment was passed by Mr. A. Dick, Sir R. Barlow and Mr. H. T. Raikes, on the 6th April, 1854.

Mr. A. Dick.—"This case was referred to the full bench by Mr. John Colvin, the judge sitting in the miscellaneous department, at the request of the Government pleader, Ramapershad Roy.

"It was argued for petitioner by Mr. Norris, that zemindars were not bound to appoint chowkeedars, and by Ramapershad that they were bound by the law to appoint.

"The majority of the Court, Mr. Dick and Sir R. Barlow, were of opinion that zemindars and other persons, to whom the right of nomination shall belong, were bound to nominate, and obliged to send the names of those whom they nominated, to the darogah. Mr. Raikes was of opinion that the petitioner had, by his answers to the magistrate's orders, shewn that he was the person who should nominate, and if any legal obligation imposed by the law is binding on any one to perform this duty, that obligation rested on the petitioner.

"A doubt was then raised, as to whether a special appeal in such a case could lie to this Court; whether in fact, this case constituted a criminal trial, or was merely a miscellaneous proceeding. To decide this point, the case was deferred for a sitting of the whole court. To-day, the point was heard by all the five judges, and the majority, Messrs. Dick, Dunbar, Raikes and Colvin being of opinion that it involved a criminal charge, a judicial investigation and a penal sentence, it therefore was a criminal trial, and consequently a special appeal did lie.

"The full court of the three judges then resumed their sitting on the case, and Ramapershad proceeded to argue that the magistrate was authorized under his general powers to fine zemindars for not nominating, and consequently the petitioner. He urged that the Court having ruled that there was a legal obligation, it followed that breach of it, constituted a misdemeanor, and was consequently punishable by the magistrate, under his general powers, though no specific punishment is provided in the regulations for the offence.

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for, a concurrence of voices in the order to be passed is conclusive.

"The universal practice of the magistrate has been to fine for breach of nomination, and Mr. Norris, has been unable to produce a single case to the contrary.

"There is certainly no specific punishment enacted for breach of obedience to the legal obligation, to nominate chowkeedars by zemindars and others, whose duty it is to make such nominations. Section 21, Regulation XX. of 1817, re-enacting Section 23, Regulation XXII. 1793. I cannot however entertain a doubt, that the legislature considered such breach of legal obligation, an offence punishable by the magistrate, for in Section 21, Regulation XII. 1807, the legislature has provided a punishment to the extent of 200 rupees commutable to six months' imprisonment, and to be awarded by the magistrate, on account of a very similar breach of legal obligation, though of minor importance.

"I am, therefore, of opinion that under his general powers, for the punishment of offences against the public weal, a magistrate is authorized to punish zemindars and others whose duty is to nominate village chowkeedars, if they pertinaciously neglect to obey the law.

Sir R. Barlow.—"The omission to nominate a village chowkeedar is not, I think, strictly speaking, a criminal offence, though it is certainly a violation of a police law, Section 21, Regulation XX. 1817. If it be held that a fine imposed on that ground brings it within the category of criminal trials, the most trifling contravention of a law, involving fine of the smallest amount must, also, as a penalty is attached to it, be treated similarly. In such case, the Court would be overwhelmed with appeals on the most trivial occasions.

"I would not, therefore, take up this case as a criminal trial. But whenever an officer acts without sanction of any law, I think that the Court is bound to interfere under the general powers of supervision, which are vested in them.

"Though Regulation XII. 1807, authorizes a fine of 200 rupees in the matter of chowkeedars, &c., *private* servants, whose names are not registered and made known to the police, there is nothing that I am aware of in the law of 1817, which justifies the fine, which has been imposed in this case; it cannot therefore, I think, be upheld. This construction is, in my opinion, quite in accordance with the provisions of Act XXXI. of 1841, which when it allows *one* appeal in particular instances, must be understood to mean that the authorities passing orders under that law have acted within their jurisdiction and competence.

"I think that Government should be informed that no provision is made for the non-observance of the law in a case such as that before us.

Mr. H. T. Raikes.—"The question before us has been, whether a zemindar is legally bound to appoint the village watchmen on

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vacancies occurring within his zemindary, and is liable to be fined by the magistrate on failing to do so.

"I can find no express law on the subject, but it has been argued by the Government pleader that Section 13, Regulation XXII. of 1793, re-enacted by Section 21, Regulation XX. of 1817, is sufficient authority to prove that this duty has been imposed on the landholders and other persons to whom the right of appointment belongs; that the appellant in the present case is the landholder and person who ought to appoint, that the non-performance of a duty, which the law has imposed upon him, is a misdemeanor, and as such, punishable by the magistrate.

"The section quoted by the pleader occurs in a regulation, directing the landholders to discharge the police establishments hitherto entertained by them, retaining the right (if belonging to them) of appointing the village watchmen on vacancies occurring. The section was however rescinded by Regulation XX. of 1817, and re-enacted, almost word for word, by Section 21, of that regulation.

"Section 21, Regulation XX. of 1817, directs police darogahs to keep up a complete register of the village watchmen employed within the limits of their authority, and further provides it 'upon the death or removal of any of the watchmen, the landholders and other persons *to whom the right of nomination to such vacancies shall belong, shall send the names of the persons, whom they may appoint to the darogah* of the jurisdiction, *that they may* be registered by him as above *directed.*'

"The section appears to me to have for its object the keeping of the thannah registers, and as a means of doing so, directs the landholders and other persons entitled to nominate, to send the names of their nominees to the darogah, that they may be registered by him. The law may be said to bind the zemindars and other persons alluded to, to this extent, viz.: to send in their nomination for registry, when they do appoint, but does not, as far as the words go, impose any *legal obligation* on any particular person to appoint.

"Although I am willing to admit that under the circumstances disclosed in this case, the appellant is one of those persons whom the magistrate might *expect* would exercise the right of appointing, I do not agree with my colleagues in considering that the law has any where enjoined that such an act shall be done by the landholders, so as to impose a legal obligation upon them, to that effect.

"Under my view of the case, it inevitably follows, that the magistrate can inflict no fine or penalty on the appellant for failing to appoint. On this point, therefore, I agree with Sir R. Barlow.

"Had I come to a different conclusion on the first point and considered the appellant was bound by law to appoint, I should

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have also held the magistrate was competent to fine him for neglecting to do so, for I find it laid down by Russell 'on crimes and misdemeanors,' page 66, that 'if a statute enjoin an act to be done without pointing out any mode of punishment, an indictment will lie for disobeying the injunction of the legislature.'"

An application being filed for review of the above order, the Court recorded the following.

Mr. H. T. Raikes.—This is an application for review of judgment, on the ground that the several opinions of the judges having been recorded on two distinct points laid before them, on which they were bound to give distinct opinions, the judgment passed by myself, should not have been given on my own view of the law on the first or preliminary point, but on the ruling of the majority of the court, which, though opposed to my own, was then binding upon me.

I have no hesitation in saying that the vernacular order of the Court remitting the fine was considered by me to be the proper order, under sanction of the majority of the court. I distinctly stated my concurrence with another judge, who was also for remitting the fine, and there can be no doubt that taking the *orders* appended to the opinions collectively, that was the decision of the majority.

As to the argument that two points were laid before the Court, and that the ruling of the majority on the first cannot be questioned by a judge dissenting therefrom, I would remark that our decision was required as to the propriety of the original order inflicting the fine, and though the question as to a zemindar's liability gave rise to the points mooted for consideration, there was no understanding at the time, on the part of the Court, that the ruling of one point by a majority affected the further consideration of the case, so as to debar a judge who dissented from exercising his judgment and recording his opinion on the whole question before us.

Under this impression, I considered myself at liberty to follow up the reasons I had adopted in the first point, in aid of my conclusion on the second, and passed an order in accordance therewith, at the same time stating my order would have been different had I held a different view of the case, and if there then is no inconsistency in my *judgment* and no doubt as to the meaning of my order, I hold it must stand as an opinion in favor of remitting the fine, and therefore, in unison with that of another judge to the same effect, I, therefore, see no necessity for granting this application.

Mr. A. Dick.—Baboo Ramapershad has argued 1st, that Mr. Raikes did virtually in his minute give an opinion, that the obligation having been ruled, a penalty for disobedience followed, and the fine was leviable.

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2nd. That if he did not give the above opinion, he gave none; for his concurrence with Sir R. Barlow, that no punishment could be awarded for not appointing chowkeedars, was dependant on his own opinion, that there was no obligation which had been over-ruled.

3rd. That Mr. Raikes was bound to give an opinion; assuming the existence of the obligation, as previously ruled.

4th. That the obligation being admitted, the punishment necessarily followed, as has been ruled in the Queen's Courts in England.

On the two first points, I am of opinion that Mr. Raikes did not consider himself bound by the ruling of the court on the point of obligation, and gave his opinion in concurrence with Sir R. Barlow, that no punishment could be inflicted, because in his view of the law there was no obligation, the latter part of his judgment, I consider, distinctly shows that he did not at the time think he was bound by the ruling in the first point.

On the 3rd point, I would observe, that I do not remember a similar question being ever mooted in a criminal trial. Indeed, it has seldom or ever occurred, that three judges have sat *together* on a criminal trial, on pure points of law. Adverting, however, to the two points in the case being closely connected, and the latter altogether dependant on the former, and to the fact of each having been considered, argued, and decided separately. Adverting likewise to the universal practice of the court in civil cases, that a previous point of law, once ruled by a majority of the bench sitting, must be assumed as correct, in considering the remaining points or issues in the case, I should, both by reason and practice in civil cases, consider myself bound to abide the ruling on the first point, and to give my opinion on the second point with reference to it.

On the 4th point mooted by the Government pleader, I need say nothing, as my judgment on it is on record.

Sir R. Barlow.—It has been argued by the pleader on application for review, that it is the universal practice on the civil side of the court, when a point of limitation is taken for the judge in the minority holding that the law of limitation *does apply*, to succumb to the majority ruling that it does *not*, and the case accordingly proceeds.

2nd. The argument is of no force in the case before us, which is a criminal case.

3rd. The limitation law bars *a hearing* of the case; if there be no limitation, the case must be heard on its merits of course, and upon *these* judgment must be given, and the judge in the minority could not fall back on his opinion on the *point of limitation*, as a ground for dismissing the plaint, joining another judge who would dismiss it on its merits.

The judge who had (at that stage of the proceedings at which

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the discussion regarding limitation arose, for the purpose of determining whether the case should stop or go on,) held that it must stop, would be bound to record his opinion upon the merits as though he had not been of a different opinion and he would have to concur, though perhaps on different grounds and by another course of reasoning, in the *order* or *judgment passed* by one or other of his colleagues to create a majority.

Volume 5, select reports page 96.—It has been repeatedly ruled that there must be a concurrence of voices in the *order* passed by the Court, though the premises upon which that order is given, may not be the same.

See paragraph 2.—I have above said that the pleader's argument on the applicability of the rule in a civil action to the case before us, is not, in my opinion, sound. In the civil case put, it could not be carried on to judgment, but by overruling the opinion of the minority.

In the criminal case before us, the appeal preferred by the zemindar was on a point of law merely, not on facts involving penal consequences. The majority held that the zemindar was bound to appoint a chowkeedar by law, but upon the principle that penal law must always be *construed strictly*, though with one colleague, I held the zemindar responsible to that extent, I also held that, as no law laid down a specific penalty for non-observance of the law regarding appointment of chowkeedars, the zemindar could not be subjected to a fine, and recommended that the subject should be brought to the notice of the legislature.

On the question of exonerating the zemindar from fine, I had the support of another judge, and the point to be determined is, whether the fine is to be remitted or not.

Two judges have concurred in the *order for remission*, though they have come to that conclusion by a different course of reasoning. This order must, in my opinion, be held to be the ruling of the Court, and be carried out: I would dismiss the application.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

BALLYE BISWAS AND GOVERNMENT,

versus

ANAND GHOSE.

Moorsheda-bad.

1854.

August 1.

Case of ANAND GHOSE.

Prisoner convicted of dacoity, sentenced to twelve years' imprisonment in banishment. Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor Ballye Biswas, in which he, the prosecutor, was wounded and property to the value of Rs. 325-2, was plundered; 2nd count, knowingly receiving and possessing a part of the plundered property.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 5th June, 1854.

Remarks by the sessions judge.—On the 25th April, 1854, a gang of about twenty dacoits attacked the house of the prosecutor, and after beating him, robbed him of his property to the amount of Rs. 325-2. After committing the dacoity, they were followed by the villagers named Haradhun Paroye, Sunkur, Goyanauth Hajra, Calee Churn Hajra, Bykunt Biswas and two chowkeedars, Khoodeeram and Ramissur and others, who endeavoured to apprehend them; a little way out of the village they came up to the prisoner who had fallen back behind the other dacoits, and on going forward to arrest him, he threw a *thal* at them, but they succeeded in laying hold of him and found some of the plundered property, viz., another *thal* and a cloth in his possession and made him over to the police. The prisoner in his defence stated that on the night of the occurrence he had gone to the house of one Guddadhur Ghose to collect rents and when the dacoity took place in the house of the prosecutor, he went there to see what was the matter, and the villagers apprehended him as a dacoit; Guddadhur Ghose on being examined stated that the prisoner had never been to his house. The prisoner in his answer at the thannah mentioned the names of several persons who he said had leagued together and committed the dacoity.

There existed no enmity between the prisoner and the prosecutor, or his witnesses. There was no proof on the record that the prisoner had been convicted of any crime before, but on his person, marks such as might have been caused by flogging, were visible. Under the circumstances I convicted the prisoner of dacoity with wounding upon full legal proof and, with reference to

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the prevalence of the crime in the district, sentenced him as stated in the proper column.

Sentence passed by the lower court.—Imprisonment for the period of twelve years with hard labor and irons in banishment and a fine of Rs. 323-6, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We find the prisoner has not given a consistent account of his being at Guddadhur's house on the night of the dacoity.

At the thannah he said, he had gone to this man's house to ask him if he would take a jote of some land that year or not. At the foujdary he said, he was passing through the village and went to Guddadhur's house, because he was a relative, and was asked by him to stay the night there. At the sessions he stated, that Guddadhur was not at home, when he called at his house for a balance of rent, but his wife asked him to stay at the house that night. These varying statements throw great doubt on the prisoner's defence, and as he admits the fact of the villagers having taken him as described by the witnesses, and Guddadhur denies his having come to his house at all that evening, we see no reason to doubt the truth of the facts alleged on the part of the prosecution, and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND CHUMMER SINGH,

versus

BEECHOO (No. 11,) SINGHA (No. 12,) BEGUN (No. 13,) KAILA (No. 14,) UKLOO (No. 15,) AND PROW (No. 16.)

Hazareebagh.

1854.

August 1.

Case of BEECHOO and others.

Prisoner convicted as an accomplice in dacoity with wilful murder and torture, sentenced to transportation for life.

CRIME CHARGED.—Dacoity with torture and plunder of property valued Rs. 177-12, with wilful murder of Kayal Singh, father of the prosecutor.

Committing Officer.—Capt. W. H. Oakes, principal assistant Governor General's agent of Lohardugga.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 28th June, 1854.

Remarks by the deputy commissioner.—The prosecutor states that on a Friday night in Magh (3rd February), his father's house was entered by a gang of dacoits, who beat his father to death, and beat prosecutor and sprinkled hot oil on him, and then robbed the house of goods and destroyed papers, including

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the leases of some villages. Prosecutor did not recognize any of the robbers.

The prisoners plead *not guilty*.

The evidence discloses no further facts.

The prosecutor in his statement to the police officer, on the 4th February, named the prisoners Beechoo and Singha as persons whom he suspected. In consequence of this, Beechoo was apprehended, on the 6th February, and his confession implicating Singha and others was recorded. This prisoner again on the 21st February, made confession before the principal assistant.

The purport of the confession before the police, which is proved by the depositions of the witnesses named in the margin,* is that the prisoner and others, thirty men, assembled in the jungle, near to theprosecutor's house and then proceeded to rob it. Prisoner staid outside and does not know by whom the murder was committed.

* No. 2, witness Lochun.
,, 10, ,, Dhunna.
,, 11, ,, Munbode.

The confession before the principal assistant attested by the witnesses named in the margin,† is to the same effect, as that before the police. The prisoner gave up two pairs of brass ornaments. These are identified as the property of the prosecutor by the witnesses named in the margin.‡

† No. 23, witness Buxoo Khan.
24, ,, Sewbux Singh.

2, ,, Luchooa.
29, ,, Hurbunt.

The prisoners Singha, Kaila and Prow are said to have confessed before the police officer, and such confessions were recorded, but the prisoners retracted them, alleging that they had been extorted.

It appeared in evidence § that the prisoner Kaila had been so beaten that he was for many days under medical treatment in the jail hospital.

§ No. 73, witness Boodhoo Ram, native doctor.

Against the prisoners Begun and Ukloo, the proof offered was the finding in their possession of some property claimed by the prosecutor; but these prisoners, as also the prisoner Singha brought credible evidence,|| to show that the property is their own.

|| No. 43, witness Puttee.
,, 49, ,, Rookhee.
,, 51, ,, Munee.

The jury found the prisoner Beechoo guilty on his own voluntary confessions. They found the other prisoners *not guilty*.

In this verdict I concur. The deliberate and consistent confession of the prisoner Beechoo, taken before the principal assistant, can scarcely be rejected. The prisoner, it is true, avoids admitting the guilt of murder, and he may ignorantly suppose that his remaining outside the house exonerates him, in a considerable degree, from the consequences of participation in the robbery. In dealing with such a case as this I feel much diffi-

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culty. Reliance on confessions only, or on confessions supported by the production of some trivial articles of property, may not only lead to erroneous convictions, but has a tendency to multiply them, by inducing the police officers, who are seldom scrupulous, to look with undue eagerness for such confessions. These remarks indicate the source of a hesitation that weighs on my mind in this case. The confessions are however, legally sufficient, and therefore concurring in the conviction of the prisoner, I have to recommend that he be sentenced to imprisonment for life, with hard labor in irons, and in transportation.

The prisoners Nos. 12 to 16 inclusive have been discharged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We convict the prisoner Beechoo of being an accomplice in dacoity attended with murder and violence. Participation in such a crime no doubt renders him liable to a capital sentence; but we think his statement, that he was not actively employed in the ill-treatment of the father (the deceased) and the son is confirmed by the fact that his person was well known to the latter, and had he been one of those actually engaged in beating and torturing them, the son would in all probability have recognized him and spoken of his presence, instead of only suspecting him from being one of his father's debtors. Taking therefore into consideration all that we think may be in favor of the prisoner, we sentence him, as recommended by the deputy commissioner, to imprisonment for life with labor and irons in transportation.

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Case of Goyaram Roy and another.

PRESENT:

J. DUNBAR AND H. T. RAIKES, ESQS., *Judges.*

SUNNAYSHEE DEY AND GOVERNMENT,

versus

GOYARARM ROY (No. 1,) BECHOO DOME (No. 2.)

Prisoners convicted of assembling with intent to commit dacoity, sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—Assembling at the outer door of the prosecutor's house with intent to commit dacoity and wounding his *pyke* on the 6th March, 1854.

CRIME ESTABLISHED.—Assembling with intent to commit dacoity and wounding the prosecutor's *pyke.*

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 22nd May, 1854.

Remarks by the officiating sessions judge.—The prisoners pleaded *not guilty.* The prosecutor states, that about 2 A. M., of the night of the 24th Falgoon, he was asleep in his house, and

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hearing a noise he came out, and saw seven or eight dacoits beating his chowkeedar, Sitanauth, the witness No. 1, whereupon he gave an alarm, and the chowkeedar and other witnesses immediately assembled and the dacoits fled in a southerly direction. He recognized the prisoners Nos. 1, 2 and two others by the light of a *mussaul*, which they carried; all the dacoits had bamboo *lattees*.

This statement is corroborated by the witness, Sitanauth No. 1, who was severely beaten in the *nullah* and by the witnesses, Nos. 3, 4 and 5, all of whom recognized the prisoners, when they were assembled at prosecutor's house.

The statements made by the witness No. 6, before the deputy magistrate and in this court differ; in the former, he deposed that he saw none of the prisoners, but heard the name of Bechoo; in this court, he names the prisoner No. 1, whom he saw beat the witness No. 1, but states that he never saw him previously and could not then identify him.

The prisoner, No. 1, pleaded in defence that he was present at his post of chowkeedar of a private house in another village that night. Bechoo, No. 2, called witnesses to prove that he was at home in the night of the dacoity, and that he bears a good character.

The *futwa* of the law officer convicts both prisoners of the charge. In this I concur, the charge being fully substantiated by the evidence of the eye-witnesses, setting aside the evidence of Gorachand No. 6, whose prevarication, which I ascribe rather to ignorance than to wilful perjury, renders his testimony worthless; and the evidence for the defence, establishing nothing beyond the general attention of No. 1, to his duties as watchman, and the previous fair reputation of No. 2.

I convict both prisoners, and sentence them to four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) There is every reason to believe that the prisoners and others had intended to rob the prosecutor's house, but were kept at bay by the witness Sitanauth, whose resistance roused the prosecutor; and some of the neighbours having shewn themselves, the dacoits made off. The witnesses swear to the identity of the prisoners, and we see no reason to doubt the credibility of their evidence; the prisoners allege enmity on the part of the witness Sitanauth, inducing him to accuse them; but the injuries he received vouch for the truth of his statement as to the attack, and his recognition of the assailants is corroborated by the neighbours who also identified the prisoners, the light of a *mussaul* enabling them clearly to see all that passed.

PRESENT:
J. DUNBAR AND H. T. RAIKES, ESQS., *Judges.*

Nuddea.

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Case of URJOON GHOSE.

GOVERNMENT,
versus
URJOON GHOSE.

Prisoner convicted of culpable homicide, sentenced to fourteen years' imprisonment, as it appears that the prisoner killed the deceased whilst really intending that his blows should take effect on another person; the charge should have been for wilful murder.

CRIME CHARGED.—Culpable homicide of Merno Chootarnee.

Committing Officer.—Yutazad Hosein, law officer, exercising full powers of a magistrate.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 18th July, 1854.

Remarks by the sessions judge.—I convict the prisoner, Urjoon Ghose, of the culpable homicide of the deceased woman, Musst. Merno Chootarnee, and, I think, he should be sentenced to a heavier punishment than, by law, I am competent to inflict.

About midnight of Wednesday, the 24th May last, the deceased, when sleeping near her son, Bahir, in the verandah *(peera)* of their house, was suddenly assailed with violent blows of a *lattee.* Awaking she saw Urjoon. Her cries raised her son, who saw him too. Her sister, Addeá, was disturbed in a house close by: she ran and seized and for a moment held Urjoon, but he got off: so her deceased brother, Jadoo, sleeping in the *chundee muddub* was roused, and he also saw and knew Urjoon.

Merno had sustained two blows on the abdomen and one blow on the thigh, she suffered much pain, her belly swelled, and on the 26th May, the chowkeedar, Mohesh Dome, was sent to report the circumstance at the thannah. That day, the thannah mohurir proceeded to the village of Bangurea, and took the deposition on oath of Merno. He found her so ill that she appeared to be dying, and he requested the darogah to join him and continue the enquiry. Upon this, the darogah proceeded to the spot, but from his report of the 29th June, it appears he thought himself incompetent to go on with the investigation without special orders. Merno, however, died on the night of Thursday, the 1st June, and the investigation then proceeded.

The deposition given by Merno (which in this court is attested by two witnesses, in whose presence it was recorded) clearly shews her belief to have been that she was assaulted by Urjoon Ghose: she supposed, as do the witnesses at the trial suppose, that the blows were not intended for her, but for her brother, Jadoo, who rightly or wrongly had been charged with an intrigue with Urjoon's sister-in-law. Jadoo, it seems, early in the night of Wednesday, first slept beside Bahir in the *peera,* but he found it hot, and went out to the *chundee muadub,* when his sister,

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Merno, took his place, Merno lay out side, Bahir had the inner place, near the wall of the house.

There is, I think, no reason to doubt the evidence given as to the identity of the prisoner; besides the dying declaration of Merno, her son saw Urjoon in the act of striking his mother, which, as they slept on the same matting, is perfectly probable, and Addea could hardly have been mistaken, for she for a moment held him. Jadoo too says, that he also recognised the prisoner. The witnesses, Mohesh, Ramchunder Dass and Sonatun Dass, came to the house after the occurrence.

The civil assistant surgeon, on examining the body, found that Merno had died from inflammation of the bowels: he saw no sufficient external indication to trace the inflammation to the blows said to be inflicted, but he thought it probable, that the external marks of the blows would be obliterated, if the woman had lived six or seven days after being struck. The blows, he said, might have led to the inflammation noticed by him.

Prisoner denied the charge and adduced two witnesses to prove an *alibi.*

One of the Jurors, who sat with me convicted, the other acquitted, the prisoner.

It appears to me proved, both that the prisoner, Urjoon Ghose, assaulted Merno, under the circumstances described, and that the injuries, which she thereby sustained, were the cause of her death. Before the assault, she was in good health. Immediately, after she was prostrated, she felt, she said, as if she were killed; and she gradually became worse till between the eight or nine days she died. It is remarkable that though Doctor Archer deposes clearly to having traced extravasated blood on the head, resulting from an external blow, neither Merno nor witnesses speak to any injury having been sustained by her on the head.

Considering both the deliberate purpose of the prisoner and the fatal result of his attack, I think that he should be sentenced to fourteen years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We entertain no doubt that the prisoner is the guilty party. He is sufficiently identified by the inmates of the house as the person who inflicted blows on the deceased with a club from the effects of which death ensued, and concurring in his conviction, we sentence him, as proposed by the sessions judge, to fourteen years' imprisonment with labor and irons.

The circumstances, however, detailed in evidence, afford strong grounds to presume that the prisoner really intended his blows for Jadoo, whose life he had threatened to take, as stated by the witnesses, in consequence of his intrigue with the prisoner's sister-in-law; the deliberate purpose coupled with the stealthiness of the attack and the time selected for it, lead to the con-

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clusion that murder was contemplated, and the fact that another not intended by the prisoner suffered in Jadoo's place being no excuse for this malicious act, we think the charge preferred against him should have been wilful murder, rather than culpable homicide.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND SUMPUD BEWA,

versus

SHEIKH KANNOO.

Mymensingh.

1854.

August 2.

Case of SHEIKH KANNOO.

CRIME CHARGED.—Culpable homicide of Musloom Bewa.

CRIME ESTABLISHED.—Culpable homicide of Musloom Bewa.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 22nd May, 1854.

Prisoner charged with culpable homicide, in endeavouring to procure the miscarriage of a widow, with whom he had carried on criminal intercourse, acquitted in appeal owing to the deficiency of the evidence.

Remarks by the sessions judge.—The circumstances of this case are thus stated in statement No. 6, for the month of September last. "The deceased, Musst. Musloom Bewa, the daughter of the prosecutrix, was married to a cousin of witness, No. 21, Sheikh Mogul. Her husband having died last year, she went to reside in the premises of her husband's cousin, and it appears in evidence that she carried on an intrigue with one Sheikh Kannoo (not yet apprehended) a servant of one Shanee Mundul. (The prosecutrix and witness No. 21, state that Shanee Mundul also shared her favors, having as the prosecutrix adds, heard it from her daughter, when she came to see her during her last illness, while the other witnesses declare that Kannoo alone was concerned in the intrigue.) The deceased having become pregnant, Kannoo with a view to screen himself and save the reputation of both, had recourse to the prisoner, a woman of the bearer caste, who was acquainted with medicine to procure abortion. It further appears from the prisoner's admission before the police that at Shanee Mundul's request, she accompanied him and Kannoo to the deceased's house and gave him, Kannoo, a twig of a creeping plant (which she procured on the banks of the river near the house) to introduce into the deceased's womb, that Kannoo then entered the house (prisoner and Shanee Mundul remaining outside) and applied it as directed by her, which immediately begun to cause pain, but Kannoo entreated her to bear it for the sake of preserving their reputation. This took place on the night of Saturday and on Sunday,

the deceased began to complain of severe pain in her stomach, telling her neighbours, that it was owing to some medicine, which prisoner gave her through Kannoo, for the purpose of procuring abortion. She continued ill until her death on the Thursday following, the 3rd of Assar. The corpse was examined by the civil assistant surgeon and he deposed that death was caused by miscarriage, that the womb was enlarged, as is the case in a state of pregnancy, that there was no fœtus in the womb, which must have been thrown away and death ensued from hæmorrhage, that there was a large sore on the surface of the womb, to which the fœtus had been attached, with effusion of blood in and around it; that the miscarriage must have been caused by the introduction of a stick of a highly irritative nature into the womb (such as the piece of stick shown to him in court, which was found in the womb); that it was called *akulmendee* and is universally used by the natives for procuring abortion by introducing it into the womb. The prisoner before the darogah admitted having given the medicine to Kannoo, to apply to the deceased's person to cause abortion, and when the darogah asked her to show him the twig, she proceeded in company with a burkundaz, witness No. 23, to the village, Bishenrampore, and taking a twig from the jungle showed it to the burkundaz, saying that this was what she gave to Kannoo to apply. The burkundaz brought the twig to the darogah, and it was produced in the court together with the piece of stick which the civil assistant surgeon discovered in the deceased's womb, when examining it, and they were of the same kind."

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Case of SHEIKH KANNOO.

The prisoner who hitherto evaded the pursuit of the police has lately been apprehended and brought to trial. Both before the foujdary and sessions court he pleaded *not guilty* and urged enmity with the prosecutrix's brother-in-law and the villagers, through whose machinations this charge has been maliciously brought forward, and in support of which he examined several witnesses, all of whom (except one, who stated that the villagers were not in good terms with him) denied any knowledge of his having had any enmity whatever with the villagers, while on the other hand the witnesses for the prosecution deposed that the prisoner had sexual intercourse with the deceased, that she (the deceased) having become pregnant, the prisoner caused Jhogoree Bewa to procure abortion by introducing a twig of the plant above described into the womb and from the effects of which she died.

The law officer found the prisoner guilty of the crime charged, in which I concurred.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The witnesses alleged that an

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Case of SHEIKH KANNOO.

illicit intercourse having existed between the prisoner and the deceased, the former through the assistance of Jhogoree Bewa procured the miscarriage, from the effects of which, the woman died, but there is nothing deserving the name of proof to bring home the charge to the prisoner. Neither in the original statements of the witnesses, nor in their depositions at the trial of Jhogoree Bewa, nor in those now taken, have the witnesses asserted, that they know this on their own knowledge, nor have they specified the source from whence they have learnt the particulars referred to by them. It may have been known to the witnesses that the prisoner had intercourse with the deceased, and from the confession of Jhogoree there are good grounds for believing that she died from the means taken to destroy her pregnancy, but there is also reason to conclude that Shanoo and Magun, were also intimate with her, and the prisoner was not therefore the only one interested in averting the consequences. It appears to us that the prisoner being the least influential of those on whom suspicion could rest, has been made to bear the whole burden of the charge; but be that as it may, on such evidence as we have to deal with, it is impossible to convict him of this crime. We therefore direct his acquittal.

PRESENT:

J. DUNBAR AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MUDHOSODUN KOWRAH.

Hooghly.

1854.

August 2.

Case of MUDHOSODUN KOWRAH.

Prisoner convicted on his own confession of having belonged to a gang of dacoits, sentenced to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 4th July, 1854.

Remarks by the officiating sessions judge.—The prisoner Mudhosodun Kowrah was committed for trial by Mr. E. Jackson, commissioner for the suppression of dacoity, upon his own full and voluntary confession of having belonged to a gang of dacoits. He pleaded guilty and admitted his previous confessions made on the 27th March, 1854, and other dates, which have been verified by the attesting witnesses.

These confessions prove the prisoner to have been for about ten years engaged in the commission of dacoity, in association with Manick Sirdar, and after his death with Surroop and other Sirdar dacoits, and to have taken part in twenty-five dacoities,

committed in the districts of Hooghly and Burdwan, and to have been during a great part of the period employed as a chowkeedar. He is at present in jail undergoing a sentence of imprisonment for twelve years, for dacoity committed in the house of Rammohun Mookopadia, in mouzah Bela Hurreespore, thannah Hurripal on the 7th November, 1852, by order of the sessions judge, dated 26th May, 1853.

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August 2.

Case of MUDHOSODUN KOWRAH.

There is no evidence against the prisoner beyond his own confessions, but as these were given voluntarily and are corroborated by the reports and other proceedings in the several cases adverted to, received from the magistrate's court, there is no reason to discredit them.

I convict the prisoner of the charge, and with reference to the commissioner's expressed intention of retaining him as an approver, I recommend that a sentence of imprisonment for life be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We convict the prisoner, on his own confession, of having belonged to a gang of dacoits and sentence him to imprisonment for life in transportation.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

SHEIKH BUKHOREE.

Behar.

1854.

August 3.

Case of SHEIKH BUKHOREE.

Prisoner convicted of conniving at and aiding in the escape of a prisoner under his custody, sentenced to seven years' imprisonment. In appeal the sentence was

CRIME CHARGED.—1st count, conniving at and otherwise aiding Gowhur Ally, alias Gokool and Choolahee Singh, Rajpoot, in effecting their escape from custody, the same being prisoners committed to the sessions court; 2nd count, wilful neglect.

CRIME ESTABLISHED.—Conniving at and otherwise aiding the prisoners in effecting their escape from custody.

Committing Officer.—Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 3rd April, 1854.

Remarks by the sessions judge.—On 7th March last, proceedings of the Nizamut Adawlut, dated 27th February, 1854, were received, sentencing two prisoners, Gowhur Ally, alias Gokool and Choolahee Singh to fourteen years' imprisonment each. The warrant was duly issued the same day, and, if there is truth in the pretence set up, whilst these two prisoners themselves were about the courts, which at this station are all within sight

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Case of SHEIKH BUKHOREE.

reduced to two years' imprisonment.

of one another. Before the magistrate could execute the warrant, these two prisoners had effected their escape the same day.

On 6th idem, these two fugitives had applied jointly with several other convicts for permission to attend court. As usual, the jail darogah was directed to allow them to attend, under proper custody for one hour. The party (ten) were sent on the 7th in charge of two burkundazes only, viz. the prisoner and another Goolam Ally. They are said to have kept about the courts, but not a single prisoner of the whole party transacted any business any where. Goolam Ally brought back eight of the party to the jail, saying the prisoner would follow with the remaining two. Afterwards the prisoner made his appearance at the jail, declaring that Gokool and Choolahee Singh had escaped from his charge.

On enquiry, it was ascertained that the prisoner was seen conducting the two fugitives to a house, Choolahee had in the town of Gya, when after a time the prisoner passed along the street, proclaiming that Gokool and Choolahee had escaped.

Witness No. 1, Fuquira Khan.
,, ,, 2, Goolam ditto.
,, ,, 3, Unnoo ditto.
,, ,, 4, Imam Ushruf.

The prisoner made a silly defence before the magistrate as to his having taken Gokool and Choolahee to court, inside of which they disappeared, and he was too much frightened to set up any alarm. He did not repeat this story before this court, but simply pleaded that he had not taken the fugitives to Choolahee's house and that they had escaped through his ill-luck. He called two witnesses, convicts, who deposed to the prisoner having taken charge of the two fugitives after some altercation with his fellow-burkundaz Goolam Ally.

The *futwa* of the law officer convicts the prisoner on the 1st count, and declares him liable to discretionary punishment by *tazeer*.

I concur in this conviction, because, under all the circumstances of the case, there can be no doubt that the fugitives effected their escape under a deep laid plot, to which many must have been aiding, but for which the prisoner must be held primarily responsible, and whether or not the prisoner was a fitting custody for the charge of notorious convicts like the fugitives, still it seems necessary that these guards should be taught they cannot, under any circumstances, lightly abuse such a trust. The same influence, which endeavoured to help the fugitives during their trial, has doubtless not abandoned them in their successful escape, and is little creditable to the jail officers. I observe the magistrate has suspended the jail darogah and Beharee, a chuprassee, of his court and brother of Choolahee and dismissed the prisoner's fellow-burkundaz, Goolam Ally.

This commitment has taken effect under section 6, Regulation II. of 1799, and section 10, clause 2, Regulation XI. of 1806

being alike applicable to guards, whether before or after conviction, conformably to Constructions 206 and 1,131. 1854.

I sentence the prisoner to the full extent of my power, under Regulation LIII. of 1803. August 3.

Sentence passed by the lower court.—Seven years' imprisonment with labor in irons. Case of SHEIKH BUKHORKE.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The prisoners, with whose custody the burkundaz appealing was entrusted, were not at the time of their escape under sentence, but as clause 2, section 10, Regulation XI. of 1806, extends the provisions of section 6, Regulation II. of 1799 to all guards of prisoners, whether before or after conviction, the prisoner was rightly committed to the sessions on the charge preferred against him.

As the prisoner was directed to escort the jail prisoners to the court house, and after that was seen to accompany the two fugitives into the town to a house belonging to one of them, whence both of them escaped, there is strong presumption for believing he must have connived at their flight, as their escape was then effected. We confirm the conviction of the prisoner on the charge preferred and seeing no such circumstances of aggravation, as to warrant the infliction of so severe a punishment as seven years' imprisonment, we sentence him to two years' imprisonment, with labor commutable to a fine of 100 Rs. payable within one month.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND GOURRAM DHOBEE,

versus

NUNDRAM DHOBEE.

CRIME CHARGED.—Wilful murder of Massumut Ishoree. Sylhet.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet. 1854.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 14th July, 1854. August 3.

Case of NUNDRAM DHOBEE.

Prisoner convicted of the wilful murder of his sister-in-law, after which he several times at-

Remarks by the sessions judge.—Mussumat Ishoree was the sister-in-law of the deceased, and was cooking some vegetables, when the prisoner came to her and asked her to grind down some herbs for him. She objected to do so at the moment, from the fear that her vegetables should be spoilt, but asked him to wait awhile. Angry at her refusal, the prisoner seized a *dao* which was near (which was very sharp and weighed 2 lbs.) and cut her down and inflicted on her ten wounds about the head,

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Case of NUNDRAM DHOBEE.

tempted suicide, sentenced to transportation for life.

neck and shoulders. He then attempted to commit suicide, but was prevented by witness No. 6.

Musst. Aradonee (No. 2,) was witness of the transaction, and the prisoner was apprehended and sent in to the magistrate.

On the 22nd June, he was tried before my court on the charge of wounding with intent to commit murder, and was convicted of the offence, but sentence was reserved, as I gathered from the report of the civil surgeon that his life was in danger, and I was apprehensive that ill consequences might arise, if he were acquainted with his sentence.

On the 30th of June, the magistrate informed me that Musst. Ishoree had died of her wounds, and I therefore cancelled the commitment on the charge of wounding with attempt to murder, and directed the magistrate to re-commit the prisoner on a charge of wilful murder.

The prisoner confessed before the magistrate, to having severely wounded the deceased and pleaded guilty to the same effect before me, but denied all intention of killing the deceased. In justification, he said, the deceased had in a shameless manner made water before him, but this story is evidently an after-thought and could be no justification, if true.

The evidence of the civil surgeon proves that when the prisoner was first committed to take his trial, no dangerous consequences were anticipated from the wounds inflicted on Musst. Ishoree, but that subsequently lock-jaw occasioned by the wounds ensued, and that this caused her death.

The assessors convict the prisoner of culpable homicide, but in this verdict I cannot concur, as the prisoner passionately struck the girl ten times with a heavy and sharp instrument. His crime is murder.

The civil surgeon, in answer to my question, states that the prisoner has evinced eccentricity since he has been under his charge, but that he is not insane and his self-inflicted wounds are well, but he has thrice attempted to commit suicide by hanging, since his apprehension.

Under these circumstances, I would convict the prisoner of murder, and beg to recommend that he be sentenced to imprisonment for life in transportation beyond seas.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner has confessed having struck the deceased with a *dao*, but denies the intention of killing her, he alleges strong provocation as the cause.

It appears that the prisoner had some altercation with the deceased, who was his sister-in-law, and doubtless his anger was caused by some abuse on her part, and in a fit of ungovernable passion, he took up a *dao*, which was at hand, and inflicted several wounds on her head, neck and other parts of her body, and then attempted to cut his own throat.

As long as his sister-in-law lived, he denied having hurt her, but after her death he seems to have been seized with remorse, and has since then confessed his crime and made several attempts on his own life.

We concur with the sessions judge in convicting the prisoner of the murder charged, and, under all the circumstances of the case as detailed in the letter of the sessions judge, we sentence him to imprisonment for life in transportation.

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PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND GOPAL DASS,

versus

LUKHUN MYTEE (No. 1,) MUDUN BHOOYA (No. 2,) POORSTUNE DASS (No. 3,) RUTUN DASS (No. 4,) KANOO DASS (No. 5,) PUHAL DASS (No 6,) DANOO DASS (No. 7,) HURREE BHOOYA (No. 8,) AND SITARAM GAIN ALIAS SETUL GAIN (No. 9.)

Midnapore. 1854. August 4. Case of LUKHUN MYTEE and others.

Nine prisoners were convicted by the sessions judge of dacoity with wounding and sentenced to nine years' imprisonment. In appeal the sentence of five was affirmed, but the remaining four were acquitted, owing to the insufficiency of the evidence.

CRIME CHARGED.—1st count, dacoity with wounding, in having committed a dacoity in the house of the prosecutor, wounded witness No. 49, (the mother of the prosecutor) and plundered therefrom cash and property to the value of Rs. 184-14; 2nd count, prisoners, Nos. 1, 2, 3 and 5, are charged with knowingly having in their possession part of the plundered property, acquired by the above dacoity.

CRIME ESTABLISHED.—Dacoity with wounding and plundering cash and property to the value of Rs. 184-14.

Committing Officer.—Moulvee Waheedoon Nubee, deputy magistrate, with powers of a magistrate at Nugwa.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 18th April, 1854.

Remarks by the sessions judge.—The prisoners plead *not guilty*. It is on evidence that the prosecutor's house was attacked and robbed by a gang of armed dacoits, on the night of the 5th January, who wounded the prosecutor and his mother. The prisoners confessed before the darogah, and the prisoners, Nos. 1, 2, 3, 4 and 6, repeated their confessions before the deputy magistrate. Prisoners, in their defence in this court, set up an *alibi*, which they fail to substantiate. The confessions are clear, consistent, and carry with them every appearance of truth, they are likewise corroborated by strong circumstantial evidence; some of the prisoners allege that the confessions were extorted by ill-usage, but this is not proven, nor is there any ground for

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suspecting that they were not voluntary, or that any improper means were resorted to, to extort them. On the contrary, from the testimony of some of the witnesses, it appears that the deputy magistrate was on the spot, whilst the local investigation was being carried on by the police, and that the prisoners, before their confessions were recorded by the darogah, verbally admitted their guilt to the deputy magistrate. The prisoner, Danoo Dass, No. 7, is an old offender; has been several times arrested on a charge of dacoity, and has undergone a sentence of one year's imprisonment in default of security. He is clearly the leader of the present robbery, though his previous conviction, under the circumstances, is not such as to warrant an enhancement of his punishment in the present instance. The *sooruthall* and the testimony of the prosecutor and some inmates of his house, prove that the robbery was attended with aggravating circumstances, though not of a very serious character. The guilt of the prisoners is fully established, and they are accordingly sentenced as recorded in the body of the statement. Some irregularities in the conduct of the police have been noticed in a separate proceeding, and the deputy magistrate has been directed to investigate the conduct of the jemadar of the thannah, who appears to have arrested some of the prisoners at the bar and to have released them on his own responsibility, after taking a bribe.

Sentence passed by the lower court.—Seven (7) years' imprisonment and two years more in lieu of corporal punishment, total nine (9) years' imprisonment each with labor in irons, and to pay a fine under Act XVI. of 1850, jointly and severally of Co.'s Rs. 177-14-9.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) "All the prisoners are said to have confessed to the police, and Nos. 1, 2, 3, 4 and 6, repeated their confessions before the foujdary officer; property was also given up by Nos. 1, 2 and 3, the only proof against the others is their mofussil confessions, and an allegation that the prisoner, Kanoo No. 5, gave up a pewter plate, as part of the plundered property, that is to say, that he told his wife to do so, and she brought it from a tank close to their house.

We confirm the conviction, and sentence passed on Nos. 1, 2, 3, 4 and 6, their confessions, having been reiterated in the foujdary, may be relied on, but with regard to the others, including Kanoo No. 5, we do not think there is sufficient evidence for their conviction, such an article as a pewter plate, is scarcely susceptible of good recognition, and being the only matter against him is too slight ground for conviction. We therefore acquit the prisoners Nos. 5, 7, 8 and 9, and direct their release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT ON THE PART OF MUSST. SAJOO,

versus

GUSUM KACHAREE (No. 1,) BREHESPUTTIAH (No. 2,) DARIAH (No. 3,) AND PETNAH (No. 4.)

Assam.

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Case of GUSUM KACHAREE and others.

Three prisoners convicted of the wilful murder of the deceased against whom they entertained a grudge for having enticed away their slave. Sentence, transportation for life.

Another prisoner convicted as an accessary after the fact, having assisted in the removal of the body, sentenced to two years' imprisonment.

CRIME CHARGED.—1st count, wilful murder of Hazaree Kacharee; 2nd count, assault with murder; 3rd count, being accessary after the fact in the above crime.

Committing Officer.—Captain E. A. Rowlatt, magistrate of Kamroop.

Tried before Brevet Major John Butler, officiating deputy commissioner of Assam, on the 18th June, 1854.

Remarks by the deputy commissioner.—Musst. Sajoo prosecutrix, wife of the deceased Hazaree, states as follows. I cannot specify the year or date, but in the month of Baisack of the present year, one day before the Behoo closed on the 6th of Baisack, about two *puhurs* of the day, after dinner, my husband Hazaree Kacharee went to hire a bullock, and did not return all day, and at night owing to some rain having fallen, I did not go out to make enquiries about him, I supposed he had taken his *kannee*, and stayed out somewhere. The next day not returning home, about one *puhur* of the day, I and my slave Pocha went out to search for him in the village, and other places, but gained no tidings of him; on going to Batna village to search for him, I went towards the *ghat* on the Buladee river, on the west of which on the sand, in the open plain, I saw vultures and crows flying over a body on the sand, and to examine what it was, I went to it, and saw that the vultures and crows had eaten the flesh and exposed the bones, leaving a little of the face; my husband had on his body *erea dhotie* and a black colored *gumcha* for the head, these two articles of clothing having recovered, I recognized my husband's corpse, and saw marks on the sand where the body had been dragged along, also marks of men's feet; supposing some one had murdered him, I cried and left the place immediately and told the villagers. I do not now recollect the names, four or five villagers went to see the corpse and take care of it, and my deceased husband's *dewar* or cousin and others, went to the Tamoolpore thannah to report the circumstances. The mohurir and burkundazes repaired to the spot to investigate the matter and saw the corpse and the marks on the sand, and the two clothes of my husband made by me, and sent

Musst. Sajoo prosecutrix, wife of the deceased Hazaree.

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Case of Gusum Kacharee and others.

for the villagers of my village and of Batna and other near neighbours to a house at Balade village, and made enquiries of each relative to my husband's death, when Kochang of Batna village, said that Gusum, Brehesputtiah and Dariah had beaten my husband, and thrown him into a water-course and held him down until he died, and taking it from thence had thrown it away. The prisoners of Balade village with other persons, the mohurir apprehended, and, on being examined, Gusum Brehesputtiah and Dariah, confessed they had beaten and killed my husband, and Petnah No. 4, with the other prisoners assisted in throwing away the corpse; Petnah also confessed that after the murder, he went with the prisoners and threw away the corpse, therefore I demand justice on them for the murder of my husband. The thannah mohurir taking evidence, considering the prisoners guilty, sent them with the two clothes to the magistrate.

Brehesputtiah, prisoner's slave Magun, last year in Baisack, came to my deceased husband and remained three months in my house, and on returning to his house, Brehesputtiah has had enmity against my husband up to the present time for taking his slave; the remaining prisoners had no ill-will against my husband, but they are Brehesputtiah's kindred and companions, and on this account they murdered my husband. My husband was not suffering from any sickness; he had attained to full manhood, and was of a brown complexion, how old he was I cannot say; excepting the two clothes I found nothing else, my husband had not taken any spirits on the day of the murder, my house is distant from the prisoners' houses about two calls, separated by the Buladee river; where the corpse was found is too far distant from my house by calling, and where the murder was committed is about two calls distant from my house. The cloth produced in court is my husband's; I made it myself and therefore recognize it, and my witnesses know it.

Dyah Kacharee prosecutor.—On the 6th Baisack early in the morning my cousin Hazaree Kacharee sent me to bring a pig, and I went to the Dingur village, and remained there that day, the next day taking a pig I returned home and saw Hazaree's wife crying, on enquiry I heard that she had found the corpse of her husband on the sand west of Bulade river eaten by vultures and crows, leaving merely the face, which she recognized. I and others therefore went to the Tamoolpore thannah to report the circumstance, the mohurrir went to the spot and made enquiries when he heard from Thosung, that Gusum, Brehesputtiah and Dariah had murdered the Hazaree, and Petnah had afterwards gone, and the four threw the body away. The whole of the prisoners confessed the above, and were forwarded to the magistrate in the usual manner. The deceased's wife has given evidence of the murder.

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Case of GUSUM KACHAREE and others.

1. Gusum, No. 1, prisoner pleads guilty.
2. Brehesputtiah, No. 2, " " "
3. Dariah, No. 3, " " "
4. Petnah, No. 4, " " "

Thosung 1st witness for prosecution, fourteen or fifteen years of age.—In the present month of Baisack I do not recollect the date, one day in the Behoo festival in the evening, prosecutrix's husband Hazaree Kacharee an inhabitant of Balade village went to Batna village from the east towards the west, when Gusum No. 1 prisoner came out of his house in front and seeing Hazaree pass by without a word, went towards a jack tree and seized him, and giving him a push towards the west, a scuffle ensued between them and about two *tars* from the jack-tree on the western side near a water-course. Gusum cried out, Come, Hazaree Kacharee is seized, he is beating me and going off. In this manner not naming any one but calling out, Brehesputtiah and Dariah appeared from their houses, and the three laid hold of Hazaree's hand and throwing him down in the ground about one *tar* from the water-course, Gusum sat upon the deceased's back and with his right hand seized his neck, and Dariah put his right hand on deceased's back, and Brehesputtiah gave him a blow with the first on the loins, and the three seizing the deceased by the hands dragged him towards the water-course, which was about knee deep, and threw him in; the three then, that is Gusum seized his neck, Brehesputtiah his waist and Dariah his back, and pressed him down, when in a short time he expired; I saw this with my own eyes; when the deceased was beaten on dry ground, he did not make a noise or call out; why he did not cry out, I cannot say: after the death of Hazaree the three prisoners left the corpse in the water and returned to their houses immediately. Brehesputtiah's brother, Petnah Kacharee, returned with the three prisoners and went to the corpse, and all four took it out of the water and brought it on dry ground and fastening a rope round the neck of the corpse, the four dragged it off towards Bulade river, I having gone to search for a calf, saw the whole affair from a distance of about two *tars* twenty-four feet. The night being dark, the prisoners did not see me; when the prisoners went towards Bulade river, then I returned to my house towards the east. From fear I did not tell the villagers what had happened; I was alone when the murder was committed. The deceased's corpse, I saw the next day on the sands of the Bulade river eaten by the vultures and crows; three or four days after the murder, a mohurrir came from the Tamoolpore thannah, and put up in the Balade village, and on asking me, I related the whole, and the prisoners were immediately apprehended, and they confessed their guilt and the mohurrir found the bones of the deceased, an *erea dhotie* and a black *gumcha* cloth for the head. These two clothes are the deceased's;

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for I have seen him wear them, and know them; I do not know why they killed Hazaree, who had attained full manhood; he was of a brown complexion, and had no sickness. I know nothing of enmity, or why the Hazaree deceased came there; I cannot say that Hazaree had taken spirits with the prisoners on the day of the murder. The deceased's house is distant about two calls from the place where he was murdered, and the prisoner's house is seven or eight nulls* distant from the place where the murder was committed. I cannot say why the prisoners killed Hazaree; the prisoners used no arms, they only beat the deceased with their hands. Gusum and Hazaree were scuffling together, they said nothing. The deceased's body was immersed in the water, it was a dark night, and I could not see any marks on the deceased's body. A little before one *puhur* of the night, the body was thrown away, and I know not what became of the rope. After the murder I returned home and rain fell during the night, I went to the village in the evening to search for a calf, and seeing these things I was astonished, and the body being taken away I returned home.

* Null or tar is about twelve feet.

Nadura, 2nd witness for prosecution, twenty-five years of age. In the present month of Baisack, one day in the Behoo a little after evening, Gusum Kacharee, Brehesputtiah and Dariah of my village near to their houses, about two *tars* from a water-course on dry land, first Gusum seized Hazaree Kacharee of Balade, and pushed him about, and crying out, Come I have caught Hazaree he is beating me, and going away, when Brehesputtiah and Dariah came out of their houses, and the three threw Hazaree down on the ground, Gusum got upon Hazaree's back, and the three beat him with their hands, I cannot specify how much the prisoners each beat Hazaree or on what part of his body, as the night was dark and I stood a little distance off, I saw the prisoners with my own eyes beat the deceased; fearing that the prisoners would see me and beat me, from fear I went to my own house afterwards; I cannot say how the prisoners murdered the deceased, I did not see with my eyes the murder committed, neither did I see the corpse taken away, nor did I see from whence the deceased was first brought, I merely saw the beating. Three or four days after the murder, the thannah mohurrir came, and said the prisoners had committed the murder of the deceased, and went to the west side of Bulade river on the sand to examine the corpse and he found some bones and one *erea dhotie* and a black *gumcha*; these clothes belong to the deceased Hazaree, he wore them, and I therefore know them, the corpse was devoured by vultures and crows on the sand, the bones were left, and the clothes only brought away; at the beating, the deceased did not make a noise or cry out, why he could not cry out I cannot say, before the beating the deceased called out for

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his slave Pocha: whether there was any enmity between the deceased and the prisoners, or whether he had taken any intoxicating liquor on the day of the murder I cannot say. The prisoners' houses are six or seven nulls distant from the place where the murder was committed, and the deceased's house is distant about the space of two calls, why the deceased came to the place I cannot say; the deceased was not sick before the murder, he was of a brown complexion and had attained full manhood; from fear I did not tell any one that deceased had been beaten; the night was dark, I cannot therefore say whether there were any marks on deceased's body, I did not see him beaten with any arms, only with hands; at six nulls distance I saw the whole affair Jano Jara was with me at the time, I am a Kacharee. From fear I did not interfere to prevent the beating; I went to worship the Deota; seeing the beating I returned immediately to my home.

Chanchana, 3rd witness for prosecution.—I cannot specify the year or date, one day in Baisack last in the Behoo, a little after evening Gusum, Brehesputtiah and Dariah of my village, seized Hazaree, husband of the prosecutrix near a water-course, and threw him down, with their right hands beat him on the neck and back, but I did not hear the deceased make any noise, and I could not see distinctly in what manner each of the prisoners beat him, for fear of their seeing me I went to my house. The night was dark, and I was at a little distance, and I cannot say whether there were any marks or wounds from the beating, or why the deceased being beaten, could not cry out; after I went away, I did not see how the Hazaree was murdered, or how the corpse was taken away; Gusum first seized Hazaree in front of his house and gave him a push, and the deceased also pushed Gusum, when, not naming any one, Gusum said, Come, I have seized Hazaree, on this call Brehesputtiah and Dariah came out from their houses and seized the deceased, and threw him down on the ground; from the spot where the deceased was first seized was distant from the water-course two *tars*, and the water-course was distant from the prisoners' houses 20 nulls. I do not know why the deceased came to prisoners' house, or why the prisoners beat him; when Gusum first seized Hazaree I heard no altercation between them; three or four days after the murder, the mohurrir of Tamoolpore came and took up his quarters in the village of Balade, and went to examine the corpse which he found on the west of the Balade river; on the sand, some bones and an *erea* cloth, and a black cloth, these two pieces of cloth belong to the deceased; I saw him formerly wear it, and therefore recognize it. The mohurrir left the bones there and brought away the two pieces of cloth. The vultures and crows had devoured the body before, and the mohurrir summoned all the inhabitants of Balade and Batna villages, and on enquiring Thosang reporting the mur-

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der, the mohurrir apprehended the prisoners at Balade village, and in their reply they voluntarily confessed that they had murdered the deceased, the prisoners and others had previously been summoned; I cannot say that there was any enmity or quarrel between the prisoners and the deceased, or that he drank any spirits with them on the day of the murder, the deceased was not sick, he had attained manhood, he was of brown complexion, the place where the murder was committed was farther from the deceased's house than could be heard by the voice, and is separated from it by the Balade river. I am a Kacharee and from fear did not communicate the circumstances to any of the villagers. The prisoners beat the deceased with their hands, and made no use of any weapons. I was frightened and did not interfere when the three prisoners beat the deceased, and went to my house. I went to the river to worship, and saw the affair and Nadura was with me then.

Kircka, 4th witness for prosecution.—Saw the prisoners apprehended at Balade village and the corpse and clothes found on the sand, and recognize the clothes to belong to the deceased, and heard the prisoners make a voluntary confession of their guilt to the mohurrir.

Gomolo, 5th witness for prosecution.—Ditto ditto.

Bestoram, 6th witness for prosecution. Moaklarun, 7th witness ditto.—I heard the prisoners No. 1, 2 and 3 confess voluntarily before the magistrate that they had murdered the deceased, and No. 4 that he had assisted after the murder in throwing the corpse away.

Defence.—Gusum No. 1 prisoner has nothing to urge in his defence; at the end of the Behoo or on the 6th of Baisack last in the evening, the prosecutor's husband having drunk *mudh*, spirituous liquor, like a drunken man rolling about came from the east towards my village, and I having taken liquor in Kupurarh's house I was coming from the north and met the deceased on the west of the village, under a *tetulie* tree, when Hazaree first seized me by the left hand, and called me *sala*, and dragged me two *tars* towards the water-course, and then grasped me with both hands and threw me to the ground. I released myself from him, and threw him down and pressed him on the back with both hands, and he was so drunk he could not get up, but fearing he would rise and beat me, I cried out, Come; on this call, Brehesputtiah and Dariah came out of their houses and joined me, and gaining courage I with my right hand gave Hazaree three blows in the neck, Brehesputtiah also gave him three blows and Dariah one blow, and rolling over, Hazaree fell into the water-course, which was knee deep, where we left him. Fearing he would beat us, we said, Let him die, and I seized his right shoulder, and Brehesputtiah his left shoulder and Dariah his waist, and with both hands pressing him down in the water, Hazaree expired.

Seeing that we were guilty of murder, and three of us not being able to remove the corpse, we left it in the water and bathed and went home, and having told Brehesputtiah's brother Petnah that we had committed murder, and that we should get into serious trouble, if the body was not removed, about one *puhur* of the night, Petnah accompanied us to the place where the murder had been committed, I took hold of the right and Dariah the left leg of the corpse, and Brehesputtiah the right hand and Petnah the left hand, and conveyed it across the Bulade river to the west side and there threw it down on the sand, and returned to our houses; Brehesputtiah produced a fowl and sacrificed it as *purachit*, an atonement and remained at home, but we did not tell any one that we had committed murder; merely that the dead must be removed, but no one came out to remove the body; four days after the murder, the mohurrir of Tamoolpore went to the Balade village to examine the corpse and summoning the people and making enquiry, Chanchana, Nadura, and Thosung Kacharees reported that we had committed the murder. In the evening we four being summoned by the mohurrir the evidence of the three witnesses was taken and our answer, in Dund Thakooreah's house, and three of us confessed that we had committed the murder, we had no enmity against the deceased Hazaree. The mohurrir went and found the bones left by the vultures and an *erea* cloth and a knife on the sand; the cloth and knife belong to the deceased, he had nothing more. I now voluntarily confess that I murdered Hazaree and have no defence to offer, I did it wilfully, it was my fate to do it.

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No. 2 *Prisoner.*—Brehesputtiah No. 2, has nothing to urge in his defence. In the month of Baisack last, I do not recollect the date, at the end of the Behoo in the evening I was in my house occupied with household concerns, at this time prosecutrix's deceased husband Hazaree having drunk spirits like a drunken man, came from the north to the village and met Gusum near the ghat of a water-course, the deceased seized Gusum and threw him on the ground, and Gusum threw him down on the ground and sat on his back, and with both hands pressed down his neck, and called out, I am fighting with Hazaree and have seized him, come; hearing this, I and Dariah came out of our houses and saw Gusum sitting on the deceased, on Gusum seeing us, he gave the deceased three blows below the neck on the back, and I joined him, and gave him three blows on the back, and Dariah gave him one blow, and the deceased rolled into the water. The deceased gave bad advice to my slave, and took him, and gave me no money and in complaining to the Chowdry, I got nothing, and from ill-will on that account I and my father-in-law Dariah, and village friend Gusum, we three joined in keeping the deceased down in the water, and in a little time he expired, in fact we resolved in killing him, and pressed him down

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in the water, the deceased's body was not under water but he expired from being pressed downwards in it, the deceased did not struggle when pressed down in the water; seeing the deceased dead, we left the place, and all three of us went to call Petnah to dispose of the corpse, and having called him, we four returned to the place, where the murder was committed; I seized the deceased's left hand and Petnah the right hand, and Dariah the left leg, and Gusum the right leg, and conveyed it a distance of one call on the west of Bulade river and threw it on the sand, and after bathing we returned home, my house is about three *tars* from the place where the murder was committed. The deceased's house is in Balade village and distant from my house farther than the voice can be heard, the deceased was a youth, and was not sick, no one saw him murdered, and I did not tell any one of the village what had happened, quietly we four sacrificed a fowl as an atonement, and returned to our houses; after four days, the deceased's cousin Dyah reported the circumstance at the thannah, and that day the mohurrir came and apprehended us, on taking the deposition of Thosung of our village and Nadura and Chanchana, and they stating that we three had committed the murder, we in our answer confessed to the mohurrir, that we had committed the murder, and he sent us to the magistrate; I did not see the witnesses at the time of the murder, and cannot say how they knew it, when we called Petnah to throw away the corpse, we told him of our having beaten and murdered the deceased, but we said nothing to any one else, neither did we call any one to throw the corpse away, which was done about one *puhur* of the night. The thannah mohurrir came and examined the corpse, and found some bones of the deceased and an *erea* cloth and a head cloth and a *tambol* knife, at the place where the corpse had been thrown away; these things belong to the deceased. I wilfully resolved on killing the deceased and murdered him, and this I now confess fully; on the day of the murder I had taken spirits, but I was not drunk; in the water I seized the deceased by the back, Gusum by the neck, and Dariah by the waist.

Dariah, No. 3.—In Baisack last, I do not recollect the date, at the close of the Behoo, in the evening, I was sitting at home in my house, when I heard Gusum call out from the *ghat* at the water-course, come, Hazaree has come and is beating me, when I and Brehesputtiah went from our houses and ran to him, and saw that Gusum had thrown Hazaree on the ground, and was sitting on his back, and was pressing his neck with both hands when we joined him, Gusum gave him three blows below the neck, and then Brehesputtiah struck Hazaree three blows on the back and I one blow, on this he rolled without making any noise into the water, and we three instantly pressed him down, I seized and pressed down his waist, Brehesputtiah his back,

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and Gusum his neck with the intention of killing him, and in a short time he expired, the deceased when pressed down in the water, did not struggle to get out. I had no quarrel with the deceased, we resolved that day on killing him, and so murdered him. The deceased is about thirty-five or thirty-six years of age, and was not sick ; leaving the body, we three returned to our houses, and told Petnah, Brehesputtiah's brother of the murder, and called him to assist in removing the corpse, we four, that is, I took hold of the corpse by the left leg, Gusum the right leg, Brehesputtiah the left hand, and Petnah the right hand, and in this manner conveyed the corpse from the water-course, where the murder was perpetrated, to the distance of a call, and threw it on the sand west of the Bulade river, and about one *puhur* of the night returned home, and quietly procuring a fowl, sacrificed it as an atonement, and went to our house. I did not tell any one that we had killed the deceased, and no one saw the murder perpretated, I make this confession voluntarily.

Petnah No. 4, *prisoner.*—I did not kill the deceased Hazaree. In Baisack last, do not recollect the date, at the end of the Behoo, about one *puhur* of the night, I was asleep in my house, when my brother Brehesputtiah and Gusum and Dariah, these three came and called me saying, A man's life is gone, we can find no one, come, we four will throw the body away. On hearing this I enquired how and who killed him, they replied, Having drank spirits, we have killed Hazaree. I told them, In these Bengal days, murder will bring you into trouble, they answered, Whatever is our fate that will come to pass. I was unwilling to accompany them, but being unable to put them off, I went with them to the water-course, and saw the corpse lying in the water, and I took hold of the right hand of the corpse and Brehesputtiah the left hand and Gusum the right leg and Dariah the left leg, and conveyed the body to a distance as far as the voice can be heard, on the west side of Bulade river, and threw it on the sand in the plain ; after bathing we returned home, and according to our custom having made atonement went to our houses ; I did not tell any one what had happened ; afterwards the deceased's brother went and reported the circumstances at the Tamoolpore thannah, when the mohurrir came to the spot, but could not examine the corpse, as he only found a few bones left by the vultures, and a black cloth and an *erea* cloth and a tambol knife ; on summoning the villagers and making enquiries, Thosung, Nadura and Chanchana in some way discovered the murder, and we four were apprehended and sent in to the magistrate. In truth, how or where the prisoners committed the murder I know not, neither was I witness to it ; being acquainted with the murder, I accompanied the prisoners in removing the body, and did not communicate the circumstance to any one. This is my answer, and I have nothing further to state.

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The jury find Nos. 1, 2 and 3, prisoners guilty of wilful murder, and No. 4, of being an accessary after the fact. In this verdict, the magistrate concurs, but remarks that the whole of the prisoners are of the most simple, rude and uncivilized nature, and are not probably aware of the heinous nature of the crime they committed.

Opinion of the officiating deputy commissioner.—The prosecutrix states that her deceased husband Hazaree went from home, on the 6th of Baisack last, to hire a bullock, and not returning the next day, she went to search for him, and discovered his corpse or bones picked by the vultures and crows on the sand bank of the Bulade river, and she recognized two pieces of cloth belonging to him, which she had made.

No. 1, witness saw the deceased Hazaree beaten and murdered by Nos. 1, 2 and 3, prisoners.

No. 2, Nadura, and No. 3, Chanchana saw the deceased Hazaree beaten by Nos. 1, 2 and 3, prisoners, and went home before the man was murdered.

Two witnesses depose to the apprehension of the prisoners, by the police, and to their confession before the mohurrir.

Two witnesses heard Nos. 1, 2 and 3, prisoners voluntarily confess before the magistrate, that they had murdered the deceased Hazaree, and No. 4, prisoner, that he had assisted the other prisoners, in conveying the corpse away.

The prisoners Nos. 1, 2 and 3, confessed before the jury, that they had murdered the deceased Hazaree, and No. 4, prisoner also confessed that he was not present at the murder, but helped the prisoners to convey the body away.

The jury find Nos. 1, 2 and 3, prisoners guilty of wilful murder, and No. 4, prisoner is guilty of being an accessary after the fact. In this verdict the magistrate concurs, but the prisoners being simple, rude and uncivilized men, and not probably acquainted with the heinous nature of the crime, he does not recommend a capital punishment. It appears that Brehesputtiah No. 2 prisoner, was in bad terms with the deceased Hazaree for taking his slave about a year ago, and on the deceased Hazaree coming to his village Gusum No. 1 prisoner seized him, and being joined by Brehesputtiah and Dariah Nos. 2 and 3, prisoners, they resolved in murdering him, but I do not think there was any previous premeditation to murder. The deceased Hazaree having unfortunately fallen into their hands, and they having a grudge against him on account of his having enticed away their slave, they took this opportunity of punishing him, and in the heat of passion, when struggling with him, and very probably under the influence of liquor, for it appears they had been drinking during the day, which all Kacharees are addicted to, their severity towards him ended fatally: the prisoners are

residents at the foot of the Bootan mountains, rude, simple, uncivilized cultivators of the soil. 1845.

The evidence adduced for the prosecution, and voluntary confessions of the prisoners Nos. 1, 2 and 3 from first to last, prove that they are guilty of wilful murder, and No. 4, prisoner of being an accessary after the fact, but from their extreme ignorance and the extenuating circumstances above stated, I am of opinion that the ends of justice will be attained, and a warning example established, if a minor punishment than death be inflicted, and with this impression, I beg to recommend that Nos. 1, 2 and 3 prisoners, Gusum, Brehesputtiah and Dariah Kacharees be sentenced to imprisonment for life with labor in irons in banishment, and No. 4 prisoner, Petnah to three years' imprisonment with labor in irons.

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Case of GUSUM KACHAREE and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We convict the prisoners, Gusum, Brehesputtiah and Dariah Kacharees, of the wilful murder of Hazaree Kacharee, and, under the circumstances alluded to by the magistrate and officiating deputy commissioner, sentence them to imprisonment for life with hard labor in transportation. We also convict the prisoner, Petnah Kacharee, of being an accessary after the fact in assisting the others to remove the body with the view of concealing their crime and sentence him, under the circumstances of the case, to two years' imprisonment with labor and irons.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

BISONATH KOWRAH.

Hooghly.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 4th July, 1854.

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Case of BISONATH KOWRAH.

Remarks by the officiating sessions judge.—The prisoner, Bishonath Kowrah, who is in jail, undergoing a sentence of fourteen years' imprisonment for dacoity, was committed for trial by Mr. E. Jackson, commissioner for the suppression of dacoity, upon a charge of having belonged to a gang of dacoits, on his own full confession.

Prisoner convicted of having belonged to a gang of dacoits, sentenced to transportation for life.

He pleaded guilty at the trial, and admitted his previous con-

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fessions, the shorter of which, made on the 3rd April, 1854, was formally attested by the subscribing witnesses.

These confessions prove the prisoner, who has been intermediately employed as a chowkeedar, to have commenced the profession of a dacoit about ten years ago in the gang of Manick sirdar, his first essay being at a dacoity committed in 1843 at Gopeenathpore factory, thannah Dunmakhally, zillah Hooghly, in which the *rung mistree* of the factory was murdered. He has since that time been engaged in altogether thirty-one dacoities in this district and in Burdwan.

There is no evidence against the prisoner beyond his own confessions, which I see no reason to question, as they are proved to have been given voluntarily and they are corroborated by the reports and proceedings of the several cases received from the magistrate's office.

I consider the charge established, and with reference to the intention expressed by the commissioner, of retaining the prisoner, Bishonath as an approver, I have the honor to recommend, that a sentence of imprisonment for life, be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) As the prisoner has confessed in the sessions court to having belonged to a gang of dacoits, we convict him of the offence charged, and sentence him to imprisonment for life in transportation.

Sarun.

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Case of CHUTTERDHARRY PANDEY.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND MOHABEER PERSHAD,

versus

CHUTTERDHARRY PANDEY.

Prisoner convicted as an accomplice in culpable homicide, sentenced by the sessions judge to five years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Wilful murder of Surnodheelal.

CRIME ESTABLISHED.—Being an accomplice in the culpable homicide of Surnodheelal.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 3rd June, 1854.

Remarks by the officiating sessions judge.—This is a case of homicide, in which two of the parties concerned were convicted at the sessions held on the 16th May, 1853, and this defendant was then noted as having been concerned. He escaped at the time, but has been since apprehended. He was named from the first as one of the parties to the attack on the deceased, whose

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skull was fractured and whose death it is clear was caused by the injuries sustained. One of the eye-witnesses Jubboo, formerly examined, has since died, but there is yet one witness No. 1 to testify that the prisoner was a party to the assault, two other witnesses Nos. 2 and 3, as well as the prosecutor having immediately afterwards heard the same, and having been told by the deceased eye-witness and the other witnesses and the prosecutor by Surnodheelal just after the attack, that this defendant and the two already convicted had attacked him on his way home. The moulvee convicts the prisoner who denies the charge, but who has nothing to offer in his defence, on violent presumption, of being an accomplice in the culpable homicide of the deceased, and concurring with him, I sentence the prisoner to five years' imprisonment with labor in irons from this date. This was the sentence awarded to Hurreehur and it is the least that can be given to the present defendant, a relation of Hurreehur, with whose mother the deceased was for a long time on too intimate terms and which, as explained by my predecessor, undoubtedly led to the attack on the deceased, though it is not proved that the defendant deliberately planned to murder him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) We see no reason to discredit the evidence of the eye-witness, who deposes to having seen the prisoner striking the deceased. Concurring with the sessions judge in the propriety of this conviction, we reject the appeal.

Assam.

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Case of BONDA SORONEAH KACHAREE.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT ON THE PART OF MUSST. DALLEE,

versus

BONDA SORONEAH KACHAREE.

Prisoner convicted of the wilful murder of his wife, sentenced to suffer death.

CRIME CHARGED.—Wilful murder of Musst. Khalloimore.

Committing Officer.—Captain E. A. Rowlatt, magistrate of Kamroop.

Tried before Major J. Butler, officiating deputy commissioner of Assam, on the 11th July, 1854.

Remarks by the officiating deputy commissioner.—Musst. Dallee, prosecutrix, states as follows.

Musst. Dallee, prosecutrix.—On the 12th of Jeth last, on Wednesday in the afternoon, about 1 or 2 o'clock, my daughter, Musst. Khalloimore, about eighteen years of age, set out in company with Musst. Soro and Musst. Packie to visit her uncle,

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Numea Kachari, at Beltollah, when about two hundred or two hundred and fifty *tars* distance, from my house, the prisoner with a *lattee* came up and killed my daughter by a blow on the head and fled, and Musst. Soro came and told me, and being greatly confused, I took Bero of my village and my son, Haidea, and went to the spot and saw the corpse of my daughter lying on her back on the ground, and by the blow of the *lattee* the skull was broken and blood flowed from the wound. I and my son took up the corpse and placed it in the prisoner's vacant house, and Bero went to report the circumstance to the Rajah, who reported to the Gowhatty thannah and a mohurir came out on Thursday, and held a *sooruthall* on the body and sent it into the magistrate. The prisoner was afterwards apprehended, and after the usual enquiries, the prisoner on being sent into the magistrate, confessed voluntarily that he had committed murder, and he also confessed before the Bukshee police mohurir. On this account, I demand justice for the deed. The prisoner's house and mine is in the same village and seeing my daughter had attained the years of puberty, to obtain her in marriage he gave me 3 Rupees and in August last took her to his house. The prisoner being old, the girl was averse to the connexion and returned to me again in Magh, and in Baisack, the prisoner took her in the same manner, but the girl was by no means satisfied and said she liked his son, Hogh, and again returned home to me. For this cause, not being pleased with the prisoner, he murdered my daughter from ill-will.

My daughter had no intercourse or connexion with any one else besides the prisoner. The prisoner struck the girl one blow on the legs, two blows on the waist and three blows on the skull. Musst. Soro and Packie, eye-witnesses, told me this, but being distressed from grief, I did not closely look after other wounds on the corpse. The girl was dressed in a petticoat of cotton and a covering and six *kansa* armlets and ear-rings of glass, she had nothing more, and all was found on the corpse. The Bukshee sent them into court and these are the identical articles, they were marked with blood; my daughter was in health, the witnesses said that the prisoner had murdered her, and thinking that he had, I placed the corpse in his house, there was no other house and the prisoner's son was not in it.

Soro told me, that when the prisoner struck the girl, she cried out, Bonda do not beat me, therefore I know that the prisoner had murdered her, Musst. Soro and Packie and others know and were eye-witnesses of the murder.

Prisoner pleads guilty.—Bonda Soroneat Kacharee, prisoner, pleads guilty to the charge of having murdered Khalloimore, daughter of Musst. Dallee, prosecutrix.

Musst. Soro 1st witness for prosecution.—On the 12th of the present month in the afternoon, I and my sister, Packie, together

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returning from Ranee towards Beltollah, near the prosecutrix's house on the road, the deceased asked us whether we were going to Beltollah, replying in the affirmative, she said she was going to her uncle's and joined us and we went along on the road in the jungle, for about a distance of two calls, when Bonda, prisoner, with a wooden *lattee*, about two or three *haths* long, in circumference ten fingers, came out of the jungle from the left side and seizing the *lattee* with both hands, struck the deceased girl, Khalloimore, on both legs and brought her to the ground. She cried out, Bonda, do not beat me, he made her no reply, but struck her in the same manner on the waist two blows and on the head two blows and below the right ear one blow, and she instantly expired; on this, the prisoner fled to the hills with his *lattee*. Seeing this, we were speechless. I left Musst. Packie with the corpse and ran to report the circumstance to the prosecutrix, and told her that the deceased mentioned Bonda's name. She immediately went with her son and a villager to the place, where the murder had been committed, and on seeing the corpse had it placed in Bonda's house. I was present and saw the whole affair, but I do not know why the murder was committed. We entreated of the prisoner not to beat the girl, but he would not pay attention to us, and there is no house near the place where the murder was committed. By the prisoner's blows, the deceased girl's waist and legs were swollen, and the skull was broken and blood flowed from it. I saw this, but I have no recollection of the exact size of the wounds. I saw the whole at a distance of about five or six *haths*. I was in front and Musst. Packie was behind, and the deceased was in the centre. I was not acquainted with the prisoner before the murder, neither did I see him before. The cloth (shewn in court) belongs to the deceased girl and is stained with blood.

Musst. Packie, 2nd witness for prosecution.—On the 12th of the present month in the afternoon, I and my sister, Soro, were returning from Ranee to our home and passing the prosecutrix's house on the road being seen, were questioned and saying we were going to Beltollah, prosecutrix's daughter, Khalloimore said she was going to her uncle's house at Beltollah, tied up a bundle and accompanied us. Soro went before, Khalloimore in the centre, and I followed in the rear, and in this manner, proceeding through the jungle road, when we had reached a distance of about two calls from prosecutrix's house, the prisoner, Bonda, came out of the jungle on the road from the left side with a wooden *lattee* in his hand, two or three *haths* long and ten fingers in circumference, and without saying a word, seizing the *lattee* with both hands, he first struck Musst. Khalloimore on the legs a blow and she fell to the ground. He then gave her two blows on the waist and she cried out, Bonda do not beat me, but he in the same manner struck her two blows on the head and a blow

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on the right side below the ear, and she instantly expired and the prisoner fled with his *lattee*. Seeing this, we were speechless. I stayed to take care of the corpse and Soro went to the prosecutrix's house to relate what had happened. The prosecutrix with two persons came and conveyed the corpse to the prisoner's house. I was distant five or six *haths* and saw the prisoner commit the deed and Soro also saw it.

I cannot say why the murder was committed; where the murder was committed is surrounded with jungle and no one near.

We begged of the prisoner not to beat the deceased, but he paid no attention to our entreaties, there was no one present at the place of the murder, we being single women did not examine the wounds, the skull appeared fractured and blood flowed, how many wounds there were and how large, I do not recollect.

I did not see or know the prisoner before he committed the deed.

I recognize the cloth shewn in court stained in blood to belong to the deceased girl.

Bhukut Doha No. 6, *and Bhuga Bhote No.* 7, *witnesses for prosecution.*—Witnesses to the state of the corpse when examined by the police.

Nundram No. 9, *and Bhattaram No.* 10, *witnesses for prosecution.*—Witnesses to the voluntary confession of the prisoner, Bonda, at the thannah, that he had murdered Musst. Khalloimore, deceased, by striking her two blows on the head with a wooden *lattee*.

Jugurnath No. 11, *and Roy Singh No.* 12, *witnesses for prosecution.*—Witnesses to the voluntary confession of the prisoner, Bonda, before the magistrate that he murdered the deceased Musst. Khalloimore by striking her two blows on the head with a *lattee*.

Beerhoo No. 3, *and Gurriah No.* 4, *witnesses for prosecution, and Runnoomukur for ditto.*—Witnesses to the apprehension of the prisoner, Bonda, when he returned to his house at night.

Mungooloo No. 13, *and Puntora No.* 14, *witnesses for prosecution.*—Heard that Bonda prisoner had murdered Musst. Khalloimore, and with others they assisted in conveying the corpse to the hospital by order of the police mohurrir.

Defence.—Bonda, prisoner, states that after I had taken prosecutrix's daughter as my wife, calling me an old man, and in contempt of my authority repeatedly running away from my house and not being able in any way to make her satisfied, I with a *lattee*, two and a half *haths* long and eight or ten fingers in circumference, with both hands, struck her with force a blow on the waist and two blows on her head and killed her. In such circumstances, I have no defence to offer.

Opinion of the jury.—The jury find the prisoner guilty of wilful murder, and the magistrate concurs in this verdict.

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Opinion of the officiating deputy commissioner.—The prosecutrix states that she gave in marriage her daughter, Khalloimore, about eighteen years of age to the prisoner, Bonda Soroneah Kacharee, in August last, and received from him 3 Rs.; that her daughter went to reside with him in August, in January and April last, and always came back to her dissatisfied, because he was old and she was averse to him. On the 12th Jeth, 24th May, her daughter, Khalloimore, went in company with Musst. Soro and Musst. Packie, to visit her uncle at Beltollah; she had proceeded a short distance of about two calls only from her mother's house, when the prisoner, Bonda Soroneah Kacharee, rushed out of the jungle, and with a wooden *lattee* (not found) struck her on the legs, waist and head, and she fell to the earth and instantly expired. She begged the prisoner not to beat her, but without saying a word or paying any attention to the entreaties of the deceased girl and Nos. 1 and 2, witnesses, he continued to strike her till she died, and then fled. No. 1 witness immediately reported the circumstance to the prosecutrix, and the prisoner was apprehended when he returned to his house at night; the medical officer examined the body, and in his examination, states that the skull was fractured and death was caused by the injury sustained. "From the nature of the wound and the extensive fracture underneath, I am of opinion that it was inflicted by a thick and heavy club or bludgeon." The prisoner pleads guilty that the girl taunted him with being old, and disregarded his authority, and repeatedly ran home, and not being able to please her, he with a *lattee* killed her, by striking her a blow on the waist and two blows on the head. The jury and magistrate find the prisoner guilty of the charge of wilful murder. The crime is fully proved by Nos. 1 and 2, eye-witnesses, and the fact of the prisoner rushing out of the jungle and striking the deceased girl, Khalloimore, several blows on the legs, waist and head, shows that he watched for an opportunity and with malice prepense, murdered her, though the deceased girl and her companions, Nos. 1 and 2 witnesses, begged him to spare her. That the deceased girl reproached him with being old is very probable, and the prisoner was doubtless annoyed at her constantly leaving him; still that alone is not a sufficient excuse for the violent assault made on the defenceless girl going through the jungle. Seeing no extenuating circumstance in the case, I must recommend that the prisoner be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner is proved guilty of wilful murder, on his own confession and on the evidence of two eye-witnesses.

Seeing no circumstances of extenuation to justify a mitigated sentence, we adjudge the prisoner to suffer death.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND OTHERS,

versus

AJRAEL.

Sarun.

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August 4.

Case of AJRAEL.

Prisoner convicted of culpable homicide, sentenced to seven years' imprisonment by the sessions judge. Appeal rejected.

CRIME CHARGED.—Culpable homicide of Dowlut alias Dowla *chokra.*

CRIME ESTABLISHED.—Culpable homicide of Dowlut alias Dowla *chokra.*

Committing Officer.—Mr. W. F. Macdonald, joint-magistrate for the deputy magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 29th May, 1854.

Remarks by the officiating sessions judge.—There can be little doubt that the squabble, which led to the attack by the prisoner Ajrael on the boy Dowlut or Dowla, about sixteen years of age, originated at a grog-shop in Gopalpore. This was the first account of Radha, the uncle of the deceased, and it is borne out by the statement of the prisoner himself. Before the magistrate however, and in my court, the meeting at the liquor-shop is denied, but it is clearly proved by the evidence of the prosecutors, Radha and the brother of the deceased, Khoosee, and the evidence of the eye-witnesses Nos. 1 and 2, Rugber and Urgund that the prisoner in a field close to the village struck the deceased so severe a blow on the head with a *gharassa,* that his skull was split and death ensued almost immediately. The prisoner Ajrael and another committed with him ran away, but were shortly seized by the villagers, who went to the spot and heard of the attack and found the body of the boy on the ground and Khoosee himself slightly wounded under the eye. That death almost immediately resulted from the wound is proved by the evidence of the witnesses in the case, and of the native doctor, who examined the body on its arrival and found the skull fractured. The prisoner denies all knowledge as to how the boy came by his death, but says that as he was passing the drinking-shop where Radha and witnesses Nos. 1 and 2, were talking together he got some liquor and that the shop-keeper told him to ask Radha for what was due by him, which he refused to do. Two witnesses Nos. 16 and 17, are named in defence, but these have nothing to say in prisoner's defence. The Moulvee convicts the prisoner of the crime of culpable homicide and declares "*deeut*" to be the penalty, and I accordingly sentence him as noted, to seven years' imprisonment with labor in irons. This weapon, the *gharassa,* is one which is commonly used in this part of the

country, and is such a one that a blow dealt with it, is pretty sure to cause death or severe wounding.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The record contains direct proof of the prisoner's guilt in the evidence of two eye-witnesses. Seeing no reason to interfere in favor of the prisoner, we reject this appeal.

PRESENT:

SIR R. BARLOW, BART., H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

KANGALEE BAGDEE.

Hooghly. 1854. August 4. Case of KANGALEE BAGDEE.

Prisoner convicted of dacoity by the sessions judge, acquitted in appeal.

CRIME CHARGED.—1st count, dacoity in the house of Koomolakaunt Set and Mohesh Chunder Set at Milkee, on the night of the 20th September, 1844, in which property to the amount of Rs. 751-10, was plundered; 2nd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 26th April, 1854.

Remarks by the officiating additional sessions judge.—A dacoity was committed in September, 1844, at Milkee, in the house of Koomolakaunt Set and Mohesh Chunder Set, in which the prisoner Kangalee took part. The affair was executed by the gang of Nobin Bagdee of Boinchi, a notorious dacoit-leader. The gathering took place in a plain near Milkee about 8 P. M. After remaining there an hour or so, some of the gang went into the village and brought away bamboos and a heavy log of wood for battering purposes. About midnight *Kali Pujah* was performed and the attack made. The wall was scaled by one of the dacoits who was lifted on his comrade's shoulders and the outer gate opened. Torches were lighted and the premises plundered. Some of the gang kept watch at the principal entrance and some at the private or back door, among whom was the prisoner. These facts are proved by the testimony of two approvers on the establishment of the dacoity commissioner, who made this commitment, which evidence I regard as quite unexceptionable. The prisoner pleads an *alibi* and calls witnesses to character. The two persons examined on his behalf proclaim him to be a man of unmitigated ill-repute, and there is no ques-

1854. tion that he has long been the terror of these parts as a robber and dacoit.

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Sentence passed by the lower court.—To be imprisoned with labor and irons in banishment for fourteen (14) years and two years more in lieu of corporal punishment, in all sixteen (16) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Mr. H. T. Raikes, and B. J. Colvin.)

Mr. B. J. Colvin.—I see no reason to doubt the truth of the evidence of the approvers in this case, there is nothing on the record to impugn it, it was received under due precautions to guard against collusion severally in May and August, 1852, and the prisoner was not apprehended till August last, his plea of *alibi* is not established, and the witnesses called by him give him a bad character, the fact of the dacoity having taken place is moreover established; I observe that other prisoners have been convicted on the evidence of these same approvers, see pages 15 and 492 of the Nizamut Decisions for 1853, I would therefore reject the appeal.

Mr. H. T. Raikes.—The prisoner is charged with committing a dacoity in September 1844 in the house of the witnesses, Nos. 3 and 4.

The proof adduced against him, consists of the evidence of two approvers, brought forward by the dacoity commissioner, and the depositions of the persons robbed to the fact of the robbery. The identification of the prisoner therefore rests entirely on the statements of the two approvers. The sessions judge considered the evidence of these men "quite unexceptionable" and he has convicted the prisoner of the dacoity charged.

I cannot uphold this conviction.

Neither the tenor of these men's confessions, nor the manner in which they were taken, seem to me to warrant such implicit belief in the truth of them.

One of the approvers confessed in the *hajut* of the dacoity commissioner in May 1852, and the other the same in August following. These confessions certainly corroborate each other, but what guarantee is there that they were made under such circumstances as preclude the possibility of collusion. I have no doubt the dacoity commissioner took every precaution in his power to prevent communication, but the *detected* falsehood of two approvers on his establishment brought to light in a trial* last month, show that these precautions cannot be relied upon. It is easy enough for two men who have committed a crime together to relate all the attendant circumstances, and to corroborate each other in all such particulars, and if their confessions be taken down under circumstances which preclude all suspicion of collusion, I think, if the fact of the crime

* See case of Kettra Kowra and others, 20th of June, 1854.

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itself be proved by confirmatory evidence that the rest of the statement may be received as true also. But when the confessions have been taken under circumstances less reliable, it seems to me very unsafe to dispense with confirmatory evidence, as to some particulars affecting the identification of the prisoner as well as to the fact of the crime charged against him. As corroborative evidence of this kind, that is to say, affecting the identity of the prisoner, is wholly wanting, I think, for the reasons above stated, he should be acquitted.

Sir R. Barlow.—The two approvers, Gopal Doollya and Rakhal Bagdee, in May and August, 1852, in their own confessions before the dacoity commissioner, named the prisoner as being one of the party who committed the dacoity charged, at Milkee.

Several prisoners were committed at the time in November, 1844, the prisoner was in *hajut*, i. e. in confinement in February, 1854, and was brought up to answer to the charge before the commissioner, when he denied all guilt or participation in the offence.

The approver, however, recognized him and Gopal at the sessions, also implicated him, saying that on another occasion he had joined with him in making preparations, though no dacoity took place. Rakhal charged him with being present at a dacoity in the village of Boinchee.

It is very difficult to place reliance on the evidence of these approvers, unsupported by other independent evidence, by which I mean evidence drawn from other sources than those to which the dacoity commissioner is obliged to apply. The confession of one approver is not confirmed in the eye of the law by the confession of another, who speaks to the same occurrences. The credibility of each, must be tested by such circumstances as are, or may be made available for the purpose. In this case, I see no extrinsic proof of the veracity of the approvers, nothing but the mutual support, which one gives to the other by recounting the occurrence of sundry dacoities in various places at very distant periods. Recently two cases have been tried by the Court, in which an extraordinary conformity in the narrations of the approvers, brought forward for the prosecution, was observable. Precautions have been taken by the officers in the department to prevent combination between those witnesses who were included in the calendar for the prosecution, yet subsequent enquiry proved beyond a shadow of doubt, that there had been communication and consultation between the approvers, for their stories corresponded to the extent of not only charging a man to have taken part in a dacoity, when proof was adduced that he was imprisoned in jail at the time of its occurrence, but it was also clearly established that one of the approvers was himself also in jail at the same time, and could not therefore possibly have committed the offence, though he criminated himself, through fear as he alleged

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of his associates, the other approvers, and these again supported the story of their companion by swearing that he had joined them in the said dacoity, which occurred under the circumstance above related,—the whole tale being utterly without the slightest foundation.

Seeing then that the only evidence on the record is that of two approvers, that the proofs against the prisoner are not drawn from various and independent quarters and that there does exist, notwithstanding the efforts made to prevent it, some communication, and that there are means, though unknown to the authorities, by which these approvers act in concert and prepare statements against others, which, from their exact correspondence have all the marks of combination apparent in them, I cannot concur in the conviction of the prisoner on the mere evidence of the approvers. I would, with Mr. Raikes, acquit him, and order his immediate release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES., ESQS., *Judges.*

GOVERNMENT AND DAHHOO THAKOORIA,

versus

BECHA KARBARREE (No. 1,) JONJALLOO (No. 2,) BOODOO (No. 3,) OKOLAH (No. 4,) DHUROO (No. 5,) MONU (No. 6,) KHONGO (No. 7,) OKOLAH (No. 8,) JOPPAHOO (No. 9,) JUGGOORAM (No. 10,) BHOKTURAM (No. 11,) CHUNUM DAHA (No. 12,) NURGNA (No. 13,) SANPEEAH (No. 14,) BENOHOO (No. 15,) KOPILMULL CHOWDRY (No. 16 APPELLANT.) CHURN (No. 17)

Assam.

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Case of KOPILMUL CHOWDHRY and others.

The prisoner who appealed in this case was convicted as an accessary after the fact in dacoity, and sentenced to two years' imprisonment. In appeal he was acquitted.

CRIME CHARGED.—1st count, dacoity attended with torture of Mussumut Deoneeja and plundering of property valued at 510 Rupees, on the 26th June, 1853; 2nd count, knowingly having possession of property acquired in the above dacoity; 3rd count, being concerned in the above crime or accessaries before and after the fact.

CRIME ESTABLISHED.—Dacoity attended with torture of Musst. Deoneeja.

Committing Officer.—Mr. C. K. Hudson, joint-magistrate of Kamroop.

Tried before Major J. Butler, officiating deputy commissioner of Assam, on the 26th April, 1854.

Remarks by the officiating deputy commissioner.—From the record of the case, it appears that on the 13th Assar or 26th June last, a party of slaves and retainers of Kopilmul chow-

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dry of Beer Bhag pergunnah, proceeded to prosecutor's house in the village of Bhulal in the middle of the day and seized him and his brother-in-law, Horumul, and sent them to the residence of Kopilmul Chowdry, and about 11 o'clock at night, the ringleaders of the party, Becha Karbarree (No. 1,) Jonjalloo (No. 2,) Boodoo (No. 3,) Bhokturam (No. 4,) and many others, forced an entrance into the prosecutor's house, seized his wife, Deoneeja, whom they tortured by putting her thigh between two pieces of bamboo, called a *chepa,* to enforce her to discover where her husband's money was concealed; not being successful in this, they robbed her of a few ornaments and a small sum of money, and dug up the floor of the house, and carried off all the property they could find to the house of Kopilmul Chowdry. The prosecutor states that the prisoners robbed him of cash in Company's Rupees 265-4, Naraine 100 rupees, Rajah Mohorie 20 rupees, altogether 385-4 and property to the amount of 124-12; property to the value of rupees 55-12-6 only, has been recovered from the prisoners.

No. 1, prisoner, Becha Karbarree, confessed the charge before the police and in the foujdary court also before the jury, and has offered no defence. The first and second counts of the charge being fully proved, by the evidence for the prosecution, the jury gave a verdict of guilty against him as one of the principals concerned in the dacoity. Concurring in this verdict, I sentence the prisoner to (7) years' imprisonment with labor in irons from this date.

No. 2, prisoner Jonjalloo, and Boodoo, No. 3, prisoner, confessed to the first count of the charge before the police and the foujdary court, but plead not guilty before the jury. The guilt of the prisoners being substantiated by the evidence and the prisoners having failed to establish their innocence, I concur with the joint-magistrate and jury in considering them guilty of the first count of the charge and sentence them each to (7) seven years' imprisonment with hard labor in irons.

No. 4, prisoner, Okola Kulita, confessed the charge of dacoity before the police and denied it in the foujdary court and before the jury, he has however admitted that he accompanied the other prisoners, and seized and confined the prosecutor; the evidence shews that he was an accomplice in the first count of the crime charged, and the jury find him guilty of it, in which the joint-magistrate concurs. Convicting him of the first count, I sentence him to (5) five years' imprisonment with hard labor in irons.

No. 5, prisoner, Dhuroo, confessed the charge of dacoity before the police and in the foujdary court, but denied before the jury. His witnesses have failed to clear him, and the first and second counts being established, I sentence him to (5) five years' imprisonment with hard labor in irons from this date.

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No. 6, prisoner, Monu, has confessed to the charge of dacoity throughout, and the record establishes his guilt of the first count of the charge. I therefore sentence him to (5) five years' imprisonment with hard labor in irons from this date.

No. 7, prisoner, Khongo, confessed the first count of the charge of dacoity before the police and in the foujdary court, but denied the charge before the jury. He has adduced no witnesses to clear himself, and the crime of dacoity being established, I sentence him to (5) five years' imprisonment with hard labor in irons from this date.

No. 8, prisoner, Okola Kouch before the police, he confessed his guilt, but denied the charge in the foujdary court and before the jury, the witnesses adduced, prove his innocence, he is prosecutor's bondsman and was made to carry off his master's property as a cooly, the title deeds of his being prosecutor's bondsman taken from prosecutor's house were given to him to keep silence. The jury and magistrate acquit him, in which I concur and order his immediate release.

No. 9, prisoner, Joppohoo, confessed to the charge of dacoity before the police, and denied in the foujdary court and before the jury, he is an old offender, and a portion of prosecutor's property was found in his possession, no credit can be placed on the evidence he has adduced. The jury consider him guilty of the second count only, but the joint-magistrate is of opinion that he is guilty of the first and second counts. On these grounds, I convict him of the first and second counts, and sentence him to (5) five years' imprisonment with hard labor in irons from this date.

No. 10, prisoner, Juggoram, denied the charge throughout and has proved his innocence by his witnesses. He is the prosecutor's brother-in-law and lived with him. After the dacoity, he picked up a gold-earring and buried it in his garden, prosecutor not being present to give it to him. The jury and joint-magistrate acquit him, and seeing no cause to differ from their opinion, I direct his immediate release.

No. 11, Bhockturam, denied the charge throughout. No credit can be placed in the statement of his witnesses. The record of the case shews clearly that he was one of the principal persons in the dacoity, and the jury and joint-magistrate find him guilty of this charge, in which I concur, and sentence him to (7) seven years' imprisonment with hard labor in irons from this date.

No. 12, prisoner, Churrun Daha, and No. 13, prisoner, Nurgna, deny the charge all along, and their witnesses depose in their favor, they have, however, admitted that they accompanied the party and apprehended the prosecutor, and their witnesses do not extenuate this conduct, the jury and joint-magistrate find them guilty of the 3rd count of the charge as accessary before the fact. Concurring in this finding, I sentence each prisoner

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to (2) two years' imprisonment with hard labor in irons from this date.

Nos. 14 and 15, prisoners, Santeeah and Burohoo, deny the charge; four witnesses depose in their favor, and nothing having been established by prosecutor's evidence against them, the jury and joint-magistrate acquit them, in which I concur and direct their immediate release.

No. 16, Kopilmul, denied the charge all along, pleading *alibi*, which he has proved by his witnesses. He has, however, admitted that he heard of the dacoity from the prosecutor two days after it occurred, and did not report it either to the police or to the magistrate, and has offered no witnesses in defence of this conduct.

The jury consider the prisoner not guilty, but the joint-magistrate is of opinion that he is guilty of privity in having concealed the above crime. From the record of the case, it is clear that the prosecutor and his brother-in-law were brought to Kopilmul's house and confined there, whilst the dacoity was perpetrated, and he was kept in durance there nearly three days, and Kopilmul saw the prosecutor in his house; had he not been implicated in the affair or countenanced the prisoners to commit dacoity, they would not have presumed to confine the prosecutor in his house. The proving of *alibi* is of no import, Kopilmul was at no great distance from his house, when the dacoity was committed, and it seems probable that he was the chief director of the dacoity. By his own confession he is guilty of a great dereliction of duty, in not assisting in the apprehension of the offenders or reporting the circumstance to the magistrate, though he saw the prosecutor confined in his house. I convict him therefore of the 3rd count of the charge as an accessary after the fact, and sentence him to (2) two years' imprisonment with labor without irons from the date on which he may be placed in jail, he being at present on bail.

No. 17, prisoner, Churrun, denied the charge all along; the evidence of his witnesses cannot be relied on, the 1st count of the crime charged is established against him, and the jury and joint-magistrate are of opinion that he is guilty. In this, I concur, and sentence him to (5) five years' imprisonment with labor in irons from this date.

Remarks by the Nizamut Adawlut.—Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner who has appealed is Kopilmul, who has been convicted by the deputy commissioner as an accessary after the fact, the reason given by the deputy commissioner, however, for his conviction appear to us to be founded on surmise only. There is no substantial proof on record that Kopilmul was cognizant of the dacoity, or that he kept the prosecutor and his brother-in-law in durance in order to facilitate

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the proceedings of those who committed the crime, the circumstances admit of grave suspicion against him, but do not in our opinion suffice for his conviction. We therefore acquit him and direct his release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

MUSST. NAYOLEE DOSADHEEN, BRIJBHOOKHUN DOSADH AND GOVERNMENT,

versus

SYED NIAMUT ALLY (No. 2,) SHAIKH HUBBOO ALIAS BOOLACK, STYLING HIMSELF HUBBOO AND UBBOOL (No. 3.)

Behar. 1854. August 5. Case of NIAMUT ALLY and another.

Two prisoners convicted of wilful murder, sentenced to transportation for life, there being no proof of premeditation.

CRIME CHARGED.—1st count, wilful murder of Dunneear Dosadh, deceased; 2nd count, beating the said Dunneear Dosadh, from the effect of which he died.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 16th June, 1854.

Remarks by the sessions judge.—As acknowledged by Niamut Ally, prisoner No. 2, a petty village joint proprietor and cultivator, before the police and assistant magistrate on 18th February last, the deceased had quitted his service, as stated, a year or two ago, and taken service with his brother, Sufdur Meyan. Sufdur Meyan employed him as *butwara* of his property in the neighbourhood. The deceased was returning home from such duties early on the morning of 10th February last, when the occurrence took place, information of which first reached the inmates of his house at Baloochuk, the prosecutrix, his wife, and the prosecutor, his son, through Dussaw Dosadh, who told them that the deceased had been beaten to death by the two prisoners on the boundaries between the villages close to the former's field. They accompanied Dussaw back to the spot, where they found the deceased lying dead.

Nayolee, prosecutrix.
Brijbhokhun, prosecutor.
Witness No. 1, Dussaw Dosadh,
" " 2, Bukhoree Dosadh.

Dussaw deposes that being outside his village, a neighbouring village, he heard sounds of beating and the cries of a sufferer. He ran up and saw the two prisoners in the act of beating the deceased on the ground with clubs. This testimony is corroborated by Bukhoree Dosadh, witness No. 2, resident of another neighbouring village, Tindoohee, who, being out in his field, was in a similar manner attracted to the spot, which he reached after

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Dussaw, saw the deceased lying dead and recognised the two prisoners running off. He remained on the spot until Dussaw returned with the deceased's wife and son.

The rest of the witnesses for the prosecution, Nos. 3 to 10, inclusive, either regard the inquest, or mere hearsay evidence.

The inquest, corroborated by Dr. Diaper's post mortem examination, proves that the deceased had been most brutally beaten. It is said, the deceased was naturally weak of his right foot and left hand, though able to follow his calling. Dr. Diaper found "marks of very severe beating over the whole body, but more especially about both legs, the back, and the left arm. There were several incised and contused wounds, on the front of both legs and both bones of right leg were comminutely fractured and protruded externally. The left arm from half way down the shoulder to the extremities of the fingers was one mass of dark-colored pulp. The elbow-joint was completely destroyed, and the bones in the neighbourhood shattered to atoms, and the brachial artery was torn in shreds. I consider that the man died from bleeding of the brachial artery, but, even had this vessel escaped injury, it is to the last degree improbable that the man would have survived the severe beating and compound fractures which he received;" and was also of opinion, "that from the great extent and severity of the injuries, that they must have been caused by the repeated and continued violent application of some heavy club for a considerable length of time and that the man was, from some cause or other, quite unable to defend himself."

Witness No. 3, Beharee Sah.
,, ,, 4, Ramjeenut Buneea.
,, ,, 5, Ramdial Telee.
,, ,, 6, Dr. Diaper.

Niamut Ally's defence before the police set up that he was watching his grain alone; a party of five or six thieves came plundering. He struck the deceased in the act who closed with him and they fell, himself underneath and the deceased above him, who in this position was beaten to death by his companions, the other thieves. The prisoner himself managed to escape unhurt having received only one or two blows, which left no marks. It was treated as a confession by the magistrate and is so entered in the calendar, but being informal, it was inadmissible. He disavowed the above defence before the magistrate and assistant magistrate, and pretended that he was so ill of fever the night of the occurrence that he could not move. He is a powerful middle aged man, whilst the prisoner Kubboo, prisoner, No. 3, his brother-in-law, is an ordinary youth of about nineteen. Both cited witnesses, the former eleven to thirteen to his being unable to move through sickness, and the latter fourteen to sixteen to his having been asleep at the time, whilst their witnesses jointly deposed to their having heard that the deceased had been killed by his fellow-thieves.

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* Syed Wozier of Pursa zillah Behar.
Mohun Sing of Tilpa zillah do.
Ushruf Ally Khan of Mirhut do. do.
Ramroop Sing of Rampore do. do.

The jury, noted in the margin,* acquit the prisoner of the wilful murder, but convict him of the culpable homicide of the deceased.

Though the place of occurrence was within sight of the deceased's village of Balloochuk, his cries did not reach that place consequent on a strong easterly wind then blowing, which brought up the eye-witnesses, Dussaw and Bukhoree, from the opposite direction. Under cross-examination, I find no reason to distrust these two-witnesses, as regards the main facts, though their testimony is not free of inconsistencies and exaggeration, especially together with the prosecutrix's and her son's, particularly the latter's, as is so commonly observable with people of their class, viz., "Dosadhs." A small stick was produced in court, with which apparently Niamut Ally told the police he had beaten the deceased; it has been indifferently recognised as Hubboo's and the deceased's, but I regard it as a make-shift purposely given up (the record being irregular as to how it was obtained) it being too thin and light ever to have caused the serious injuries, the deceased underwent. I think reliance may be placed on the genuineness of Niamut Ally's admission before the police, the spirit of the same pretence: viz., that the deceased had been killed by thieves being adhered to in the vaguest hearsay manner by both the prisoners' witnesses before this court. It is further corroborated by a letter† from another village proprietor, one Chummun, who again confirmed it before the magistrate on 13th February, No. 14, though he at the same time recognised both the stories, which by that time had been adopted as he said, the one as first, and the other as subsequently bruited about, thus proving out of his own mouth, the utter worthlessness of his statements, and his leaning towards the prisoners in charging them, to correspond so exactly with the contradictory pretences set up by Niamut Ally. The defences, as thus resulting, are thoroughly unfavorable to the prisoner's innocence, whilst the *post mortem* examination, bespeaks the gross improbability of the deceased's ever having been beaten after such a fashion by fellow-thieves, and certainly not whilst the deceased according to Niamut Ally's police admission held him on the ground. There is no evidence to the deceased's bad character as consorting with thieves, but the contrary, supported by Niamut Ally's own acknowledgment of his having been his servant, as also as being in his brother's employ at the time of the occurrence. The foregoing circumstances go far to maintain the darogah's report of the 14th December, No. 13, regarding the village proprietary influence

† Brought by Bolakee Dosadh, witness, No 7, when reporting the occurrence at the thannah on 11th February, No. 2.

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having been at work to suppress the evidence for the prosecution, and something of the kind is traceable in the trimming evidence of the Putwaree Gujadhurlal especially, and Ramjewun Singh and Jeetbuhal Singh, witnesses, 8, 9 and 10, in this court as compared with that they had previously given before the magistrate, and will account for the hard swearing of the prisoner's witnesses and Chummun's fellow-feeling for the prisoners. The alleged motive for the deed is the deceased's having abandoned Niamut Ally's employ after a considerable period intervening. However, the deceased had been Niamut's ploughman, and the prisoner's cross-examination of Dussaw and Bukhoree established that Niamut Ally had had considerable trouble in retaining a ploughman ever since. Testimony elicited and tested in this way, merits great weight, and the nature of the beating on the legs and arms is in keeping with such circumstance. If not intended to deprive a fellow-creature of life, to which extent evidence is wanting, it at least exposes a cruelly malevolent and wicked design to maim for life a defenceless being, physically incapacitated from defending himself against two such assailants according to the evidence for the prosecution, and that he was helpless at the time is also Dr. Diaper's opinion, and deprive him of the use of his limbs on which his daily bread depended. The presumption is therefore strong that this brutal beating originated in the revengeful spirit which so commonly actuates agrarian outrages in this country, and which are so easily concealed or suppressed. I can convict the prisoners of nothing short of the aggravated culpable homicide of the deceased, and I would sentence Niamut Ally, prisoner No. 2, to 14 years' imprisonment in banishment in labor and irons and in like manner Hubboo, prisoner No. 3, to 7 years in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoners were charged with wilful murder of Dunneear Dosadh and the sessions judge, after recapitulating the evidence, which proves that the deceased was beaten to death by the prisoners in the most merciless manner, says he can convict the prisoners of nothing short of the aggravated culpable homicide of the deceased, and proposes that Niamut Ally, prisoner No. 2, should be sentenced to fourteen years' imprisonment in banishment and Hubboo No. 3, to seven years in the district jail.

The defence set up by the prisoners has varied on each occasion, while the proof against them consists of the statements of the eye-witnesses, who say they saw the two prisoners in the act of beating the deceased while on the ground with clubs or *lattees;* that they ran off after the witnesses had distinctly recognized them, and on reaching the deceased, they found life nearly extinct and he shortly afterwards expired.

The evidence of these men has been considered trustworthy

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and implicitly relied upon by the local authorities; their account of the assault has been consistently adhered to throughout their examinations, and we see no reason to disbelieve it. But their statements show that the beating was continued while the deceased was lying helpless on the ground; and the evidence of the medical officer discloses such extensive injuries on the body of the deceased that the assault must have been of the most desperate character, and will allow of no other presumption than that his assailants were determined to take his life. The appearance of the body, as described in the 5th paragragh of the sessions judge's letter, shows that the beating extended over every part of the person, fracturing the bone of the right leg in several places, so that the splinters protruded externally in some parts; the left arm likewise from the shoulder to the extremities of the fingers was smashed to pieces, and resembled "*one mass of dark-colored pulp; the elbow-joint completely destroyed and the bones in the neighbourbood shattered to atoms.*" Injuries such as these could never have been inflicted by two men with *lattees* upon another, lying helpless before them with the belief that he could ever rise again with life, and the man must in fact have been dying before they left him; whatever then may have been the intention of the prisoners in the first instance when they commenced the attack, it seems to us obvious that they must have continued the assault with the deliberate purpose of destroying life, and repeated their blows till they believed their object was effected. Under such circumstances we can find the prisoners guilty of no less a crime than wilful murder, and as we can see no reason to draw any distinction between the prisoners, both being equally criminal, we sentence them to imprisonment for life in transportation. A capital sentence need not we think be recorded in this case, as the murderous acts were clearly not the result of previous premeditation. The meeting was accidental, and though we see nothing in that to palliate the murderous nature of the assault which followed, it deprives it of that character of deliberate malignity which would have precluded any mitigation of punishment.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

BHEEM CHURN UGUSTEE (No. 1,) SHEIKH SUKKAWUT HOSSEIN (No. 2,) DHROOB PUNDAH (No. 3,) KUNDROO CHOWDRY (No. 4,*) DYANEE DHUR (No. 5.*)

Cuttack.

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Case of BHEEMCHURN UGUSTEE and others.

Conviction and sentences passed by the sessions judge in a case of forgery and false personation in a civil suit, upheld in appeal.

CRIME CHARGED.—1st count, Nos. 1 and 2, forgery, in having fraudulently forged or caused to be forged the two documents, marked respectively in Oriya Kha and Ko, viz. a deed of sale and a confession of judgment, both purporting to have been executed by witness, No. 3, in favor of prisoner, No. 1, and No. 3 having uttered the said document, marked Ko, in the court of the Moonsiff of Balasore, knowing the same to be forged; 2nd count, Nos. 1 and 2, aiding and abetting in the above forgery, and No. 3, aiding and abetting in the uttering of said document, knowing it to be forged; 3rd count, Nos. 1 and 2, privity to the said forgery, and No. 3, privity to uttering the said document knowing it to be forged; 4th count, Nos. 1 and 2, having uttered the said document, marked Ko, in the court of the Moonsiff of Balasore, knowing the same to be forged, and No. 3, fraud in having personated witness, No. 3, Joihurree Biswal, and Nos. 4 and 5, privity to the above fraud; 5th count, Nos. 1 and 2, aiding and abetting in uttering the said document, knowing it to be forged; 6th count, Nos. 1 and 2, privity to uttering the said document, knowing it to be forged; 7th count, Nos. 1 and 2, aiding and abetting in the above fraud, that is in aiding and abetting Dhroob Pundah in fraudulently personating Joihurree Biswal; 8th count, Nos. 1 and 2, privity to the above fraud.

CRIME ESTABLISHED.—Nos. 1 and 2, forgery, and No. 3, uttering the forged document, knowing it to be such, and of having personated the said Joihurree Biswal, the alleged writer of the said document.

Committing Officer.—Mr. V. H. Schalch, officiating magistrate of Balasore.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 23rd May, 1854.

Remarks by the sessions judge.—The following are the particulars of this case.

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* Acquitted by the sessions judge.

1854. August 5. Case of BHEEMCHURN UGUSTEE and others.

On the 20th December, 1853, Bheem Churn Ugustee, prisoner No. 1, filed a plaint in the court of the Moonsiff of Balasore in the name of Joihurree Biswal (witness No. 3,) countersigned and certified, according to the practice of the court, by Sheikh Sukkawut Hossein, mookhtear, prisoner No. 2, to the effect that the said Bheem Churn Ugustee was the identical individual he represented himself to be, and on the 22nd idem, Dhroob Pundah, prisoner No. 3, filed an *ikrarry jawab* or confession of judgment to the plaint, in like manner, countersigned and certified by the said Sheikh Sukkawut Hossein, mookhtear, and it being contrary to practice to have the plaint and answer certified by the same person, (the object of the certificate being thereby manifestly defeated,) the suspicions of the Moonsiff's *serishtadar*, Mahomed Rizaoollah, to whom the documents were taken were awakened, and he told Dhroob Pundah to take back the answer and get it certified by some one else, when Sukkawut Hossein, who was close at hand, stepped forward and declared that he knew Dhroob Pundah to be the person he represented himself to be, viz., Joihurree Biswal; and asked what objection there was, to his wishing the certificate to that effect. And on Dhroob Pundah's objecting to receive back the answer, the *serishtadar* took the documents and laid them before the Moonsiff, in whose presence the prisoners, Nos. 1, 2 and 3, persisted in maintaining that Dhroob Pundah (No. 3,) was Joihurree Biswal, but while he was inspecting the documents, Sunnatun Putnaik, witness No. 2, a connexion of Joihurree Biswal's, who was present in court, represented to the Moonsiff that Joihurree Biswal was not present, and the false personation was at once established, and rendered the proof of the forgery a matter of easy attainment.

Joihurree Biswal, witness No. 3, deposed that he never borrowed the money, nor executed the *cubalah* exhibit, No. 2, marked *Kho* in *Oriya*, referred to in the plaint and answer, and witnesses Nos. 4, 5, 6, 7 and 8, whose names are attached thereto as witnesses, deposed that they neither saw the said Joihurree Biswal execute the document, nor attested it themselves.

Witnesses, Nos. 9 and 10, deposed that the hand writing of the *cubalah*, *Kho*, and also that of the rough draft, *gho*, was the hand-writing or similar to the hand-writing of the prisoner, No. 2.

Witness, No. 11, deposed that he received the rough draft of the *arzee*, marked *gho*, from the prisoner, No. 2, and copied it fair on a stamped paper.

All three prisoners pleaded *not guilty* to the several charges preferred against them, but when called on to make their defence, they made partial admissions, each endeavouring to cast the blame from himself to the others.

Against Bheem Churn Ugustee, prisoner No. 1, I consider the

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crime of having forged the *cubulah*, marked Kho, and the confession of judgment, marked Ko, in concert with the prisoner, No. 2, to be fully proved by his own defence, the evidence of the witnesses and the facts of the case; the said two documents having been manifestly forged for his benefit.

Against Sukkawut Hossein, prisoner No. 2, the crime of being an accomplice in the forgery of the *cubalah* marked Kha, and confession of judgment, marked Ko, is, in my opinion, fully proved from the fact of his having attested and certified the plaint and confession of judgment to have been presented, or filed in the Moonsiff's court by the identical parties, in whose names they were written; the evidence of witness No. 11, to the effect, that he engrossed the plaint at his request, the evidence of the witnesses, Nos. 9 and 10, and the similitude between the handwriting of the *cubalah* and the rough draft of the *cubalah*, and that of the certificates of personal identity, affixed to the *cubalah* and the plaint; his own admission before the Moonsiff that he procured the attestation of Kundroo Chowdry and Dyaneedhee Maintee (prisoners Nos. 4 and 5, acquitted) to the confession of judgment, assuring them that he knew the document was executed by Joihurree Biswal; the evidence of the witnesses, Nos. 1, 2, 3, 13 and 14, to the effect, that after the forgery was detected, he still asserted before the Moonsiff that Dhroob Jenna was Joihurree Biswal, and the general circumstances of the case.

And against Dhroob Pundah, prisoner No. 3, I consider the crime of uttering the fabricated confession of judgment, marked Ko, in the name of Joihurree Biswal, knowing it to be a forgery, and of having personated the said Joihurree Biswal, the alleged writer of the said document, is proved by the evidence of the witnesses, Nos. 1 and 2, his own defence before this court, and the general facts of the case.

And in concurrence with the *futwa* of the law officer, which is filed with the record, I, with reference to the prevalence of the crime of forgery in this province, and the fact of Sheikh Sukkawut Hossein being a mookhtear, sentence Bheem Churn Ugustee and Sheikh Sukkawut Hossein, prisoners Nos. 1 and 2, to seven (7) years' imprisonment with labor in irons, and Dhroob Pundah to three (3) years' imprisonment, and to pay a fine of rupees fifty in lieu of labor in the course of one month, or to undergo the imprisonment in labor without irons, until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The facts of this case are set forth by the sessions judge in his remarks on the trial, and we find on a perusal of the record, that the admissions of the prisoners are sufficient for their conviction, confirmed as they are generally by the statements of the witnesses. The forgery, no doubt, was planned by the two principal defendants, who aided each other,

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in all details of the conspiracy intended to defraud Joihurree Biswal of either his land or his money, and the account given by the sessions judge, clearly shews how the attempt was brought to light and how clearly the guilt of all concerned is made out by the evidence. We see no reason to interfere with the conviction and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

TRIAL NO. 7.

GOVERNMENT, RAM MOHUN SIRCAR AND JADOB CHUNDER SIRCAR,

versus

GIREEDHUR DAS (NO. 10,) SISTEEDHUR DUTT (NO. 11 APPELLANT,) ROHMUT SHEIKH (NO. 15 APPELLANT,) MONEERUDDIN SHEIKH (NO. 17,) IKRAM SHEIKH (NO. 23,) ALUM SHEIKH (NO. 24,) AND ANUND SHEIKH (NO. 28.)

TRIAL NO. 8.

GOVERNMENT AND CHUNDRONATH TULLAPUTUR,

versus

GIREEDHUR DAS (NO. 45,) TORIPOOLLAH SIRDAR (NO. 48,) ALUM SHEIKH (NO. 49,) AND BOODHAI SHEIKH (NO. 51 APPELLANT.)

TRIAL NO. 9.

GOVERNMENT AND NEELMONEE MOJOOMDAR,

versus

SISTEEDHUR DUTT (NO. 52 APPELLANT,) BOODHAI SHEIKH ALIAS FUKKIN (NO. 54 APPELLANT,) AND ROHMUT SHEIKH (NO. 55, APPELLANT.)

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TRIAL NO. 10.

GOVERNMENT ANE MOHESH CHUNDER JOWARDAR,

versus

GIREEDHUR DAS (NO. 30,) SISTEEDHUR DUTT (NO. 31 APPELLANT,) BUKAOOLLAH SIRDAR (NO. 33,) MONEERUDDIN SIRDAR (NO. 34,) IKRAM SIRDAR (NO. 39,) TORIPOOLLAH SHEIKH (NO. 40,) KOODRUTOOLLAH SHEIKH (NO. 41,) ALUM SHEIKH (NO. 42,) AND ISHOO SHEIKH (NO. 44 APPELLANT.)

The prisoners were convicted and sentenced by the sessions judge in the

CRIME CHARGED.—*Trial No.* 7.—1st count, dacoity in the house of Ramdhun Sircar and Jadob Chunder Sircar, prosecutors, in which property to the value of Rs. 599-4-9 was plundered; 2nd count, receiving portions of the abovementioned property

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several cases of dacoity with which they were charged. In appeal, one prisoner was acquitted.

knowing at the time that such property had been obtained by dacoity.

Trial No. 8.—1st count, dacoity in the house of Chundernath Tullaputur, prosecutor, in which property to the amount of Rs. 113-2-6 was plundered, and the prosecutor and witnesses Nos. 1, 2 and 3 were maltreated; 2nd count, prisoners Nos. 48, 49 and 51, receiving portions of the abovementioned property, knowing at the time that such property had been obtained by dacoity.

Trial No. 9.—1st count, dacoity in the house of Neelmonee Mojoomdar, in which property valued at Rs. 256-1-6 was plundered; 2nd count, receiving portions of the abovementioned property knowing at the time that such property had been obtained by dacoity.

Trial No. 10.—1st count, dacoity in the house of Mohesh Chunder Jowardar prosecutor, in which property to the amount of Rs. 117-5-0 was plundered; 2nd count, prisoners Nos. 31, 33, 34, 39, 40, 41, 42 and 44, receiving portions of the abovementioned property, knowing at the time that such property had been obtained by dacoity.

CRIME ESTABLISHED.—*Trial No.* 7.—Prisoners Nos. 10 and 24, accomplices in dacoity, and prisoners Nos. 11, 15, 17, 23 and 28, knowingly receiving property plundered in dacoity.

Trial No. 8.—Accomplices in dacoity.

Trial No. 9.—Prisoners Nos. 52 and 55, knowingly receiving property plundered in dacoity, and No. 54, accomplice in dacoity.

Trial No. 10.—Prisoners Nos. 31, 39 and 44, knowingly receiving property plundered in dacoity, and Nos. 30, 33, 40, 41 and 42, accomplices in dacoity.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 31st March and 1st April, 1854, respectively.

Remarks by the sessions judge.—*Trial No.* 7.—This and the next trial were decided in March, and the other two in April, but I have entered them all in this month's statements, as otherwise the Court would not be aware of the sentence passed on some of the prisoners convicted in the first two trials, but sentenced in the two last, and all are so connected that it is much better that the Court should, in one statement, know how they were disposed of. The first calendar was only received on the 28th, so I worked like a dray-horse to get through the trials, and to be in time for the examination of the junior assistants held at Beauleah, on the 3rd of this month.

This was a simple dacoity, perpetrated by a gang of fifteen men in the house of the prosecutors, an uncle and his nephew, living together. Property to the value of nearly 600 Rs. was plundered, including about 225 Rs. in cash. On the apprehen-

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tion of a person by name Mudai (who escaped from the Pubna jail before the case was committed in February,) he implicated several others, and No. 10, when apprehended, confessed both before the police and acting joint-magistrate, that he was concerned. And a *tussar* silk *dhotee* was found on the prisoner which he claimed, but could not prove his right to it. No 24. also confessed before the police and joint-magistrate to being concerned. No. 11, confessed in the mofussil, and a *thalli* was found on him, which he claimed. He also laid claim to a *ponchee* (numbered 10,) and a pair of *bank mull* (numbered 41,) the former given to his daughter, and the latter pawned by his son with an up-country man, No. 29, (acquitted) acting as a broker, or *dallal* on the occasion. On No. 15, were found three articles of clothing, and an old cover-lid, or *kentta*, and three witnesses deposed they were his property, but I consider it fully proved they belonged to the prosecutors. A gold *nuth* (numbered 28,) found in the possession of No. 17, was also claimed by Ram Mohun, and it was proved to belong to him. On No. 23, was found a *battee* worth eight annas only, this the prisoner claimed, but it was proved to belong to the prosecutor, Jadob Chunder Sircar, and the witnesses all deposed this prisoner was a bad character. A pair of *bank mull* were also found on a prostitute, who said she had received them from No. 23, but this he denied, and the woman had no witnesses. On No. 28, was found a *mohun mallah*, or silver necklace (numbered 39,) and a cover-lid which he claimed, and brought forward, to establish that the *mohun mallah* was his, a person who had *got it* made for him, and the silver *nuth* who made it, but neither of these witnesses (Nos. 257 and 264,) could recognize the necklace. His witnesses however all gave him a good character. I have therefore on their foujdary confessions (I reject the mofussil ones, as it was quite evident there had been an alteration made in the date of that by No. 10, and none of the witnesses could say when the prisoners had been apprehended) convicted Nos. 10 and 24, of being accomplices in dacoity, and Nos. 11, 15, 17, 23 and 28, of knowingly receiving plundered property, and have sentenced Nos. 17 and 28, in this case, and Nos. 10, 11, 23 and 24, in trial No. 10, and No. 15, in trial No. 9. The trial was held under Act XXIV. of 1843.

Trial No. 8.—This was a dacoity perpetrated by a gang of twenty men, and the prosecutor's brother, and a female servant, since dead, were wounded, the latter on the head; No. 45, (who is the same as No. 10, in the first trial) and Nos. 48 and 49, (who is the same as No. 24, in the first trial) and No. 51, all confessed, both in the mofussil, and foujdary. No property was found on No. 45, but on No. 48, there was found a *dhotee;* on No. 49, and old *mirzai;* and on No. 51, a *katta bazoo*, fully identified as the prosecutor's property. I have therefore, on their

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foujdary confessions, convicted Nos. 45 and 49, of being accomplices in dacoity, and Nos. 48 and 51, on their mofussil and foujdary confessions of the same offence, and have sentenced the three first in trial No. 10, and No. 51 in the next case. This trial was also held under Act XXIV. of 1843.

Trial No. 9.—This was a simple dacoity perpetrated by a gang of twenty men, and property and cash to the value of Rs. 256, was plundered. No. 54, (the same as No. 51 of the second trial) both in the mofussil and before the joint-magistrate again confessed to being concerned in this dacoity, and his confessions were proved to have been voluntarily made—Nos. 52 and 55, (Nos. 11 and 15, of the first trial) confessed only in the mofussil, but for the reasons given above in trial No. 7, I reject these confessions. However as a *kutora* (numbered 1,) and a *nuth* (numbered 5,) found on these prisoners were fully recognized as the property of the prosecutor, I have convicted them both of knowingly receiving plundered property and have sentenced No. 52, in the next case. No. 54, on his proved confessions, I convict of being an accomplice in dacoity, and have sentenced him and No. 55, in this case. The trial was held under Act XXIV. of 1843.

Trial No. 10.—This too was a simple dacoity and property and cash valued at Rs. 117 carried off, Nos. 30, (No. 10, of trial No. 7,) 33, 34, 40, 41 and 42, (No. 24, of trial No. 7,) confessed, both in the mofussil and foujdary, that they were concerned also in this dacoity, and some articles of property were found on Nos. 33, 34, 40 and 41, I have therefore, as in the other trials, convicted Nos. 30 and 42, of being accomplices in dacoity, on their foujdary confessions; and Nos. 33, 34, 40 and 41, on their mofussil and foujdary confessions, No. 31, to whom a great quantity of the property was traced, I have convicted again of being a receiver of plundered property, also No. 39, on whom a very large and remarkable *lottah* was found, and which was fully proved to belong to the prosecutor. On No. 41, were found three articles, a worked *pawn* bag, (numbered 29) a small looking-glass (30) and a red-edged *saree* (31). The two last were not recognizable, but the *pawn* bag was, being very tastefully worked, and so were the cover-lids found on the other prisoners, and which the prosecutor said had all been worked and sewn by his sister, evidently a superior needle-woman. I have therefore passed a consolidated sentence on the prisoners convicted in the other cases in this trial, viz. Nos. 30, 31, 39, 40 and 42. Three of the prisoners implicated in this dacoity escaped from the *hajut*, making five in all; and it will be seen, thirteen have been convicted, which, considering the time that had elapsed since some of the dacoities occurred, speaks well for the police; neither the Nazir nor any of his *peadahs* were employed in these cases. The trial was held under Act XXIV. of 1843.

Sentence passed by the lower court.—Trial No. 7.—Prisoner

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No. 17, four years' and No. 28, three years' imprisonment with labor and irons, No. 15, sentenced in trial No. 9, and Nos. 10, 11, 23 and 24, in trial No. 10.

Trial No. 8.—Prisoners, Nos. 45, 48 and No. 49, sentenced in trial No. 10 and No. 51, in trial No. 9.

Trial No. 9.—Prisoner No. 54, ten years' and No. 55, five years' imprisonment with labor and irons, being a consolidated sentence for two offences.

Trial No. 10.—Nos. 30 and 42, fourteen years' and No. 31, seven years' imprisonment with labor and irons being a consolidated sentence for three offences; Nos. 33, 34 and 41, five years' and No. 44, three years' imprisonment with labor and irons, No. 39, five years, and No. 40, ten years with labor and irons, being a consolidated sentence for two offences.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) *Trial No.* 7.—In this case the prisoners, Sisteedhur Dutt and Ruhmut Sheikh appeal.

The mofussil confessions in this and the three following cases having been rejected by the sessions judge, the evidence against the prisoners consists in the finding of certain articles in their possession.

With Sisteedhur were found a pewter plate, a bracelet, a nose-ring and an anklet, the three last articles having been produced by one Ishur Sircar, with whom the prisoner stated that he had deposited them. At the trial he claimed them as his own, but of seven witnesses out of eleven whom he examined, not one could say a word in his favor, while the articles were clearly and positively identified for the prosecutor. In his petition to this court, he, for the first time, accuses the darogah of having falsely got up the charge against him, because he had detected him in attempting to get at the woman of his house, in the night time. The conviction in his case is good, and the Court will not interfere with the sentence.

With Ruhmut were found two *sarees*, a coverlet and a *chaddur*. For the prosecutor, two witnesses swear to all four, and one witness to two articles, while three witnesses identify them as belonging to the prisoner, and eight witnesses swear to his having gone to Assam some time before the dacoity, and not having returned till some time after its occurrence He is entitled to the benefit of the doubt which arises on such strong evidence in his favor, and we acquit him and direct his immediate release.

Trial No. 8.—Sheikh Boodhai alone appeals in this case.

His confession before the magistrate is proved to have been voluntarily made, and he made no claim, at the trial to the *tabeez* found with Suroop Peshagur, with whom, as stated in his confession, he had placed it. In his petition to this Court, he admits having confessed to the magistrate, but says he did so according to the instructions of the darogah.

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Case of SISTEEDHUR DUTT and others.

The conviction is good and we confirm the sentence.

Trial No. 9.—All three prisoners in this case appeal.

Sisteedhur Dutt.—It is proved that a large *kuttoree* was found in his box, and in his presence; and it is fully identified for the prosecutor. In his defence, the prisioner said he knew nothing about it, and declined to examine any of the witnesses, whom he had cited. The conviction is good, and the sentence is confirmed.

Boodhai Sheikh.—The prisoner confessed both in the mofussil and before the magistrate. There is full evidence to the fact of the latter confession having been freely and voluntarily made. The sentence is confirmed

Ruhmut Sheikh.—The sessions judge rests his conviction of this prisoner on the finding of a *nuth* or nose-ring in his house. It is identified for the prosecutor by three witnesses. For the prisoner three witnesses identify it positively, as belonging to him, and one says it is exactly similar to the nuth, he had seen in prisoner's family. The prisoner must have the benefit of the doubt, which arises on the evidence. We accordingly acquit him, and direct his immediate release.

Trial No. 10—In this case Sisteedhur Dutt and Ishoo Sheikh appeal.

Sisteedhur Dutt.—Nine different articles were found in prisoner's possession, all of which have been fully identified as belonging to the prosecutor. The prisoner also claimed them as his own, and cited six witnesses to support his claim. One woman, on examination, denied all knowledge of them. Another woman was reported not to be forthcoming, and four men, who came into court, the prisoner declined examining.

Ishoo Sheikh.—The articles found in this man's possession are claimed by him as his own, but the evidence on his behalf is weak and unsatisfactory, while that on the part of the prosecutor is clear and explicit, and one of the articles, as remarked by the sessions judge, was of such a nature as to render its identity unquestionable.

We see no reason to interfere with the sentences passed against these two prisoners, and reject the appeal.

PRESENT:
J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND SHEIKH KANNOO,
versus
SHEIKH KOBEER.

Dacca.
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Case of SHEIKH KOBEER.
Prisoner, an old offender, convicted of cattle-stealing and sentenced to nine years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, Theft of a cow, belonging to Kannoo Khan, prosecutor, valued at Rs. 3-12; 2nd count, receiving and possessing the above cow, knowing the same to have been so obtained; 3rd count, being a notorious bad character.

CRIME ESTABLISHED.—Theft of a cow.

Committing Officer.—Mr. W. H. Brodhurst, joint-magistrate of Furreedpore.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 21st April, 1854.

Remarks by the sessions judge.—The prosecutor missed his cow from the hut in which it had been placed at night, and having heard that the prisoner had been stopped with it, went to the thannah. The prisoner had been seen with it on the road, when he had given a false name, and said the cow belonged to Askur. In this court he said the cow had been forced on him by others, but could assign no motive for the act, he called no witnesses, nor did he question the prosecutor or his witnesses.

Records of four former convictions for cattle-stealing were produced, and the prisoner being evidently a confirmed thief of cattle, a severe sentence was inflicted.

Sentence passed by the lower court.—Imprisonment for the period of seven years with labor and in irons, and two years in lieu of corporal punishment in all nine years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner was arrested with the cow in his possession. At the thannah, he said he had taken the cow away from the prosecutor's house without his knowledge, and without his leave, because he owed him wages and would not pay him. In the foujdary he said, the prosecutor had got the case up against him falsely, because he would not agree to take service with him. At the sessions, he said he was seized on the road by one Khepoo, who took him to the house of Saduk where he was tied and beaten and taken with the cow to the thannah. In his petition to this Court, he ascribes all to the enmity of the prosecutor. These statements are so inconsistent and the evidence against the prisoner so clear, that we entertain no doubt of the prisoner's guilt.

The prisoner appears to be an old and hardened offender, and we see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT,

versus

SHEIKH DOOMY (No. 18,) AND MUSST. LUZINA BEEBEE (No. 19.)

Sylhet.

1854.

August 10.

Case of SHEIKH DOOMY and another.

Two prisoners convicted, the one as principal of premeditated murder, and the other of being an accomplice in such premeditated murder of her husband; both sentenced capitally.

CRIME CHARGED.—Wilful murder of Sheikh Jongee.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 21st July, 1854.

Remarks by the sessions judge.—On the evening of the 8th of July last, the neighbours of Sheikh Jongee, deceased, hearing a groaning in his house, entered it and found him lying on the ground with his skull and left arm fractured. He was sensible and told them that his wife Luzina (prisoner No. 2,) and Doomy (prisoner No. 1,) had assaulted him, and he pointed out a log of wood with which the attack had been made. He died about daylight the next day. Doomy prisoner No. 1, made no attempt at the time to explain the circumstance, but Musst. Luzina said that the deceased tripped and fell, and was attacked by dogs who inflicted upon him the wounds.

The prisoners were apprehended and made a voluntary confession of their crime before the darogah, which they repeated to the magistrate to the following effect.

Doomy states that he had been carrying on an intrigue with Luzina, and was found out by the deceased, who turned him out of the house, and that Luzina came to him into the field, where he was working, and asked him to help her to kill her husband. That he at first refused, but at her earnest entreaties consented, and the following night was fixed for the deed, as Jongee was ill. That he accordingly at the time appointed, went and knocked at Jongee's door, and was admitted by Luzina who began to flourish in her hand a stick used to beat out rice. That her husband asked her what she was doing, and requested water which she gave him. That she then sprang upon the deceased and held him down, and made a sign to him, the prisoner, to help her. That the deceased struggled much and nearly reached the door when he fell, and that the prisoner fell with him but got up again, and taking from Luzina's hand the piece of wood, struck deceased a violent blow on the head. That he raised his arm to protect his head, when he, the prisoner, with another blow fractured it. That he, the prisoner, ran away and concealed

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Case of SHEIKH DOOMY and another.

himself in a field where he heard the sound of blows, which he supposed were inflicted on the deceased by Luzina. He pleaded guilty before my court and advanced nothing in extenuation of his crime.

The prisoner Luzina confessed that she had consulted with the prisoner Doomy to kill her husband, and that she admitted him in the manner related by him. That her husband was ill, and they agreed it would be letting the opportunity slip, if they did not carry out their intention. That her husband overheard the conversation and attempted to leave the house, when Doomy struck him three blows with the log of wood thereby fracturing his skull and arm.

The log of wood was produced in court, and was three feet long and weighed four *seers* 10 *chuttacks*.

The prisoner Luzina pleaded *not guilty* before my court, and stated that Doomy had committed the deed.

The *sooruthal* shewed that the skull and arm of the deceased were fractured, and that he died from the effects of his wounds about eight hours after he was attacked.

The assessors convict the prisoner Doomy of the wilful murder of Sheikh Jongee, and Musst. Luzina of being an accomplice therein, and in this verdict I concur, and seeing no extenuating circumstances recommend that both prisoners be sentenced capitally.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The male prisoner, Doomy, has from first to last confessed that he consulted with the female prisoner, Luzina, with whom he had had an intrigue for two years, to murder her husband, the deceased, and that he struck blows, which fractured the skull and arm of the deceased husband.

The female prisoner, Luzina, denying intrigue with the male prisoner, Doomy, admits that her husband, the deceased, had notoriously accused her of it, for which she abused him, and though their quarrel was outwardly made up, inwardly they retained enmity towards each other. She confessed before the magistrate that she had consulted with Doomy, as to depriving her husband of life, and she further confessed that when, though unexpectedly to her, Doomy appeared where she and her husband were sleeping, one night after the husband had been attacked with cholera and was weak, she and Doomy determined that the opportunity should not be lost for effecting their purpose; and that her husband overhearing this, got up and attempted to escape, when Doomy attacked and struck him three blows, with a log of wood, on the head and arm, so that he died soon after, having first accused her and Doomy of beating him, to the neighbours, who had immediately assembled at her calling out.

The neighbours depose to the intrigue between the prisoners being notorious, and also to the deceased having declared that

both prisoners had beat him and brought him to the state in which he was found.

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We concur, therefore, in convicting the male prisoner, Doomy, of premeditated murder, and the female prisoner, Luzina, of being an accomplice in such premeditated murder of her husband, and, seeing no mitigating circumstance in the case, sentence both prisoners, Doomy and Luzina to be hanged.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

GOVERNMENT,

versus

BEEROO SHEIKH.

Hooghly.

1854.

August 10.

Case of BEEROO SHEIKH.

Prisoner convicted on his own confessions of having belonged to a gang of dacoits, sentenced to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 25th July, 1854.

Remarks by the officiating sessions judge.—The prisoner was committed for trial by Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity, upon the charge of having belonged to a gang of dacoits.

The prisoner Beeroo Sheikh, who is at present undergoing a sentence of seven years' imprisonment for dacoity, made a voluntary confession before the deputy magistrate, on the 26th January, 1854, of having been for the past seven or eight years a professional dacoit, having commenced his depredations in the gang of Harro Sirdar, and having subsequently in association with him and other leaders been engaged in many dacoities, in the Baraset and Hooghly districts. He subsequently made a still fuller confession upon different dates between the 5th and 29th April, and he is also mentioned repeatedly as a sirdar dacoit in the statements of the two approvers Loylab Mosulman and Rama Mochee,* made originally on the 1st December and 9th September, 1853.

* Witnesses Nos. 1 and 2.

The prisoner pleaded guilty upon the trial, and the charge is fully proved by the evidence of the approvers witnesses Nos. 1 and 2, and by his own confession of the 26th January, 1854, given voluntarily before the deputy magistrate in the presence of the witnesses Nos. 3 and 4. He declined offering any defence in this court.

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Case of BEEROO SHEIKH.

I convict the prisoner Beeroo Sheikh of the charge, and with reference to the expressed intention of the dacoity commissioner to retain him as an approver, I have the honor to recommend that a sentence of imprisonment for life be passed upon him.

The original records of the cases, wherein the prisoner was concerned, are forwarded for the purpose of being laid before the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Two old approvers depose to the fact of the prisoner having been engaged with them in a number of dacoities. On being asked, after hearing their evidence, whether he wished to say anything in defence, he replied in the negative; and as he has made free and voluntary confessions of his guilt, first before the deputy magistrate, and again before the sessions judge, we convict him of the crime charged, and sentence him to imprisonment for life in transportation beyond sea.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND JOYNATH KUBERAJ,

versus

SOOBUL SHEIKH ABDUL (No. 1,) HAZAREE ABDUL (No. 2,) BURRA DOOMUN ABDUL (No. 3,) AND BHYRUB ABDUL (No. 4.)

Rajshahye.

1854.

August 10.

Case of SOOBUL SHEIKH ABDUL and others.

Prisoners convicted as accomplices in dacoity, sentenced by the sessions judge to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of Joynath Kuberaj, in which property to the amount of Rs. 11-6-0 was plundered; and 2nd count, being an accessary in the abovementioned dacoity, both before and after the fact.

CRIME ESTABLISHED.—Being accomplices in dacoity.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 18th February, 1854.

Remarks by the sessions judge.—This trial was supplementary to the joint-magistrate's calendar case No. 2, for October 1853, forming trial No. 11 for the last month. Full particulars of the dacoity were given in statements Nos. 6 and 8, laid before the Court, and the four prisoners are the approvers who, when brought up to give evidence in the sessions court, repudiated their statements made before the joint-magistrate, and denied all knowledge of the dacoity. The joint-magistrate was informed that they had not conformed to the conditions under

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which the pardon was tendered to them and this led to their commitment. On their confessions made before the police and joint-magistrate, both of which were fully proved to have been voluntarily made, (the former by the darogah who took them down, one of the attesting witnesses having left his home) and the evidence of one witness who recognized No. 1 when going away after the dacoity, I have convicted all four of being accomplices in dacoity, and sentenced them to five years' imprisonment with labor and irons. I before (in statement No. 8, for January) said it was not a case that called for approvers, and on hearing the confessions of the prisoners I am the more convinced, that they ought not to have been admitted as approvers. They stated they remained *outside* of the premises, and who actually perpetrated the dacoity they could not say, nor what property was plundered, or by whom taken. Nevertheless they named, each in their mofussil confessions, thirty-two individuals and in the foujdary from twenty-eight to thirty-one. From this, it is quite evident that they thus must have implicated many innocent persons, and this no doubt, in the hope of being admitted as approvers, and escaping punishment themselves, and I cannot help thinking that the police held out to them this assurance. The darogah was simply examined to the confessions, and having an attack of ague it was with the greatest difficulty he could give his evidence at all, though seated on a chair when he did so. The trial was held under Act XXIV. of 1843 and the Court's Circular Order of the 5th July, 1844.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) In their petition to this Court, the prisoners deny the fact of the dacoity, and allege that the Nazir held them in durance for several days, and made out statements on their behalf, of the purport of which they are ignorant, but that they understood they would be released after giving their evidence at the sessions. The fact of the dacoity, however, is clearly established, and it is proved that the prisoners made voluntary confessions thereto, both in the moffussil and before the magistrate. The depositions on oath made by the prisoners, before the magistrate, after they had confessed, sufficiently shew that no fabricated statements, purporting to be their confessions, were got up under the influence of the Nazir, and the certificate of the magistrate is in itself satisfactory evidence of the confessions having been voluntarily made in his presence. We see no reason to interfere with the sentence and reject the appeal.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

JADOO ROY AND GOVERNMENT,

versus

BROJONATH GOWALA (No. 1,) KOFELUDDEEN (No. 2 APPELLANT.)

Hooghly.

1854.

August 11.

Case of KOFELUDDEEN.

Appeal dismissed in consequence of the prisoner having confessed.

CRIME CHARGED.—1st count, dacoity and plundering property to the amount of Rs. 337-9; 2nd count, knowingly receiving portions of stolen property in the above dacoity.

CRIME ESTABLISHED.—Dacoity and knowingly receiving portions of the property plundered in the above dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 4th March, 1854.

Remarks by the officiating sessions judge.—The trial was conducted in accordance with the provisions of Act 24 of 1843. The prisoners pleaded *not guilty*.

The prosecutor's statement is, that about two o'clock A. M. on the night of the 6th January, his house in the village of Somrah was entered by thirty or thirty-two dacoits who forced open his principal door, whereupon he fled by a postern, and concealed himself until their departure, when he returned and discovered that he had been plundered of cash, ornaments, cloth and household utensils of various descriptions, value Rs. 337.

The chowkeedar of the village, witness No. 1, observing a light at the prosecutor's house approached it, and upon his calling out enquiring what it was, the dacoits threatened him, whereupon he went and alarmed the villagers, who turning out accompanied him in a body, and seeing the dacoits making their escape they pursued them, and the chowkeedar captured the prisoner No. 1, and the witness Premchand No. 2, having felled the prisoner, No. 2, succeeded in capturing him likewise. This statement is corroborated by the witnesses Nos. 3, 4 and 5. The prisoners confessed both before the police authorities and the assistant magistrate to having been concerned in the dacoity, but they denied having the property in their possession when taken. They denied their previous statements at the trial, stating that they were casually at Somrah on the night of the dacoity and were wrongfully apprehended and accused.

The charges against the prisoners Nos. 1 and 2, being fully proved by the evidence of the witnesses and by their own voluntary confessions before the police and to the assistant magistrate, I convict them of both counts of the charge, and sentence them to imprisonment for seven years with labor in irons.

The magistrate has been requested to take suitable notice of the meritorious conduct of Muddo Chowkeedar. 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court see no reason for interference. The petitioner confessed before the assistant magistrate, to being concerned in the dacoity, and now tells another tale. August 11. Case of KOFELUDDEEN.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT AND KALACHAND DOSS,

versus

MADHUB KOOREE.

Tipperah.

1854.

August 11.

Case of MADHUB KOOREE.

Appeal dismissed. Construction 1030 cited as authorizing the commitment.

CRIME CHARGED.—Burglary attended with violence, and theft of property belonging to and in charge of the prosecutor, valued at Rs. 111-9-9.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 25th April, 1854.

Remarks by the officiating sessions judge.—The prisoner, Madhub Kooree, was committed for trial on the charge of having burglariously entered the house of the plaintiff, Kalachand Doss, on the night of the 28th January last, and having taken therefrom property to the amount, as stated, of Co.'s Rs. 111-9-9.

The circumstances of this case are as follows: On the night in question, the plaintiff, who is the owner of a cloth-shop in the chowk bazar of Comillah, was awakened from sleep by hearing a sound as of the rattling of metal articles in the inner room, where the more valuable portion of his property was generally placed. He immediately arose and taking a light in his hand, saw a man in the act of issuing from a hole made in the wall of the inner room (opposite to which a cutting effected in the bamboo *tattee*, outer wall had given entrance to the burglar.) The man was then evidently in the act of endeavouring to escape by that passage, and thence through the exterior aperture to reach the outside. The plaintiff immediately seized the thief, who endeavoured to effect his escape, but the opportune arrival of a chowkeedar, who happened to be on the spot, as also of a neighbour both of whom hastened to his assistance, enabled him to capture the prisoner. The property was found in and about the very mouth of the hole in the inner wall made by the burglar. The plaintiff had slept in the verandah or passage between the inner or outer wall of the

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Case of MADHUB KOOKEE.

house, he thus almost as soon as he had made a few paces round the wall, came direct upon the prisoner.

The prisoner denied the charge and alleged some former petty dispute about the price of four annas worth of cloth due by him to the prosecutor, who, he states, got up the charge through revenge at not receiving payment. This excuse, trivial and puerile on the face of it, completely broke down before the positive and direct evidence on oath of three witnesses, who clearly and distinctly deposed to having been present at, and having acted in the capture of the prisoner when issuing from the passage which he had bored in the inner wall of the premises.

The prisoner was immediately on his arrest, conveyed to the sudder thannah. The witnesses brought forward by him in his defence could state nothing that bore in his favor; and the evidence indeed of the different witnesses generally in the case went to prove, that he is a person of but very indifferent character, with no settled means of living.

In conformity with the *futwa* of the law officer, I pronounced sentence upon the prisoner of three years' imprisonment with hard labor in irons.

I cannot help stating that I deem the committal of this case by the magistrate as quite unnecessary. He had ample authority in his own hands to meet the amount of criminality involved. In the first place, the amount of property proved to have been taken from the plaintiff's premises did not exceed Rs. 50-9-9, and there were no circumstances of aggravation whatever in the case; nor had the prisoner ever been punished for any offence of a similar description before. The magistrate could, surely, never have seriously deemed the trifling blow with his hand dealt by the prisoner with plaintiff's face at the moment when he was seized by him, and which had no worse effect than to cause his nose to bleed, to form a circumstance of real aggravation.

I do not consider that there was any occasion for the committal of this prisoner by the magistrate.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court see no cause of interference; all the circumstances stated by the sessions judge are fully borne out.

With reference to the remarks of the sessions judge, as to the propriety of the commitment, the Court observe that it was correct under Construction No. 1030.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS. *Judges.*

RAJUN SHAHOO AND GOVERNMENT,

versus

BALA (No. 1,) AND PEER ALLEE, (No. 2.)

Tirhoot.

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August 11. Case of BALA and another.

Prisoners convicted as accomplices in high-way robbery with wounding, sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Highway robbery in forcibly robbing the prosecutor, Rajun Shahoo, on the road, of money and jewels, &c. valued at Co.'s Rs. 107-5, with wounding of one Doma.

CRIME ESTABLISHED —Being accomplices in highway robbery attended with wounding.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before the Hon'ble R. Forbes, sessions judge of Tirhoot, on the 29th April, 1854.

Remarks by the sessions judge.—The prosecutor, by profession a *shroff* or money-changer, having proceeded about mid-day of the 31st December last or 16th Poos, 1261, Fuslee, from his home in mouzah Pokhereah Tolah Mujereah in prosecution of his business to a market in mouzah Chynputtee, was returning in the evening having with him Rs. 22 in cash, Rs. 14 in pice, and two gold-mohurs and two gold nose-rings, altogether Rs. 107-5 in a large bag or sack carried on the back of a pony, and having got outside the bazar of Chynputtee fell in with one Doma Pomaria, witness No. 1, and one Byjnath Rai witness No. 2, going in the same direction as himself, and they all travelled together. On their reaching the boundary of mouzahs Nussor, Pokhereah, &c. the pony being in the front the prosecutor and the witness Doma, No. 1, following, and last of all the witness No. 2; a man coming up from behind took his stand in front of the witness Doma, and to the latter's question who he was, he answered that he was a Koeree, and while these two were speaking another coming up struck the witness Doma a blow with a *lattee* on the head, after which the one who had first appeared also struck Doma a blow with a *lattee* on the cheek, and eight or nine others armed with *lattees* came up. Six of them seized and carried off the property on the back of the pony while two stood by and one of the latter struck Doma another blow with a *lattee* on the waist. The prisoner Peer Allee also struck the witness Byjnath Rai with a *lattee* on the ankle. Doma fell down senseless on the ground and the prosecutor and the witness Byjnath Rai ran away home and afterwards the witnesses Nos. 6, 7, 8 and 9, took Doma to his house. The prosecutor and his two companions only recognized the two prisoners among the highway-men from their having known them before, owing to the prisoners living in their vicinity.

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The witnesses, though they saw that there was a sack on the pony did not know before the robbery what its contents were, but the witness Byjnath was told by the prosecutor after the affair that it had contained rupees, gold-mohurs and pice. The witness Doma too, deposed to knowing that the prosecutor being a *shroff* was in the habit of carrying about money to exchange at the different bazars and hauts.

The report of the sub-assistant surgeon, who had medically treated the injury received by the witness Doma, shews, that the latter "had a severe contused wound of the scalp," which, however, both that officer reported and the man's appearance in this court shewed to be healed. The witnesses too to the *sooruthal* depose to Doma's having a mark of a blow on the head, on the right cheek, on the wrist of the right hand, and above the ankle of the right foot.

The prisoners both pleaded *not guilty* and attempted to set up an *alibi* in their defence, but their witnesses besides being of their caste and creatures of their own, could not establish the defence set up. Concurring, therefore, in opinion with the law officer in his *futwa* (*tazeer*) that the prisoners were clearly proved to have been among the highway-men, who having waylaid the prosecutor and his companions, robbed the former, in which robbery Doma was wounded, the prisoners have been found guilty of being accomplices in highway robbery attended with wounding, and sentence awarded to them as shewn in the foregoing column.

Sentence passed by the lower court.—Each of the prisoners to be imprisoned for seven (7) years, and one year in lieu of corporal punishment, in all eight years, with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prosecutor and the two witnesses deposed distinctly to the recognition of the prisoners, when first examined, shortly after the occurrence; and their subsequent statements have been entirely consistent with those depositions. In their petition to this Court, the prisoners merely ask for revision of the proceedings, but do not attempt to impugn the credibility of the evidence. We see no reason to mistrust it, and therefore reject the appeal and confirm the sentence.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

GOVERNMENT AND KYLASS TILEE,

versus

MANICK ALIAS SOOJUN BAOREE (No. 3,) NIMAI BAOREE (No. 4,) RAMCHUNDER GHOSE MUNDLE (No. 5,) SREERAM MUNDLE (No. 6,) PRANKRISHTO KANDEE (No. 7.)

Beerbhoom.

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Case of MANICK alias SOOJUN BAOREE DAGGEE and others.

Prisoners convicted of dacoity by the sessions judge chiefly on evidence to their recognition, acquitted in appeal.

CRIME CHARGED.—Prisoners, Nos. 3 to 7, with dacoity attended with torture, committed in the house of Kylass Tilee, from whence property to the amount of Rs. 182-13½, was plundered; prisoner, No. 7, 2nd count, knowingly receiving property acquired by committing the abovementioned dacoity.

CRIME ESTABLISHED.—The prisoners are convicted of the crime charged.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 17th June, 1854.

Remarks by the officiating sessions judge.—This case was tried on the 10th, 11th, 12th, 13th and 15th of May, 1854, and referred to the Nizamut Adawlut on the 19th idem, with a recommendation that the prisoners be transported beyond seas for fifteen years with labor and irons. It was sent back by the superior Court with an order to the effect that the sentence proposed by me was contrary to Section 8, Regulation LIII. of 1803, and that I had myself the power to sentence the prisoners to sixteen years' imprisonment, including two years in lieu of stripes, with hard labor and irons, in banishment.

The following is a copy of my report on the case. The case appears to be thus. On the 24th of Chyte or 5th of April, 1854, the prisoners, Nos. 3, 4, 5, 6 and 7, went with others, armed with swords and *lattees*, and attacked the house of Kylass Tilee, the prosecutor, and one Dassee Tilin in the village of Rajpore, at the dead of night, and assaulted both with *lattees*, also others. The said Dassee Tilin was seriously burnt on the lower part of her body by prisoner, No 7. The prisoners having obtained the knowledge where the rupees and jewels were concealed, robbed the house and departed.

Prosecutor, Kylass, states that on the night of the 24th Chyte, he was aroused from sleep, at about 12 o'clock, and saw a light on the premises and heard a noise; he went out of the apartment where he was sleeping, and was seized by the prisoners, Nos. 3 and 4, who beat and bound him, he then saw others

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beat Dassee with *lattees*, and one burn her with a *mussal*, when she pointed out where her rupees were kept, also jewels. The dacoits then robbed the house and departed. He (prosecutor) released three parties, witnesses, Nos. 2, 3 and 4, who were on the premises and had been bound and beat by the dacoits. People from the neighbourhood came soon after, but no traces could be found of the robbers. He recognizes the property found, a "*thalee*," as his.

The prisoners all plead *not guilty*.

Prisoners, Nos. 5, 6 and 7, were assisted by Gholam Myooddeen, vakeel.

Dassee Tilin corroborates the evidence of the prosecutor; she recognizes the whole of the prisoners, Nos. 3, 4, 5, 6 and 7, as being of the gang, who attacked her and robbed the house; that No. 7, was the party who burnt her with the *mussal;* that Nos. 6 and 7, were armed with swords; that one Kumla (a very old woman) who was with her, was also assaulted.

Witness No. 2, Deenoo chowkeedar, corroborates the evidence of the prosecutor and the witness Dassee, and states that he was within the premises of the prosecutor, he heard a noise at the outer door and enquired who was there, was answered, thannah burkundazes on their round, he opened the door and went out, he was seized and bound and then taken within the premises; he saw the assault committed on witness, No. 1, and recognizes the prisoners, Nos. 3, 4, 5, 6 and 7, as being of the party, who attacked and robbed the house. Prisoners, Nos. 5, 6 and 7, were dressed as burkundazes, prisoner, No. 5, was armed with a sword. He recognizes the *thalee* found in the premises of prisoner No. 7, as the property of the prosecutor. Witness, No. 3, who heard a noise at the house, and came to see the cause, states he was seized and bound by the dacoits and recognizes prisoners, Nos. 3, 4, 5, 6 and 7, as being present and the party who committed the robbery. Witness, No. 1, who was with witness No. 2, within the premises, corroborates his evidence and recognizes prisoners, Nos. 3, 4, 5, 6 and 7, as being of the gang, who attacked him and the rest also robbed the house and premises; he recognizes the property found in the house of prisoner No. 7, as that of the prosecutor.

Witnesses, Nos. 8, 9, 10 and 11 prove the confessions made voluntarily by the prisoners, Nos. 3 and 4, in the mofussil, also witnesses, Nos. 12 and 13, to that made by the same party before the acting magistrate The confessions implicate the three other defendants, and the reason for their being made was, that Nos. 3 and 4, had not received their share of the spoil, when a division was made under a tree, near a tank in the vicinity of the village Patra, where prisoners Nos. 5 and 6, reside. Witnesses Nos. 4 to 16, prove the finding of the property stolen, on the premises of No. 7, prisoner. The other witnesses prove the absence of

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prisoners, Nos. 5 and 6, from their village on the night of the occurrence and to have seen prisoner, No. 7, on the 24th of Chyte, at the village of Patra, where Nos. 5 and 6, prisoners, reside.

Prisoner, No. 3, Manick alias Soojun Baoree Daggee, in defence, states he confessed in the mofussil, being forced so to do by the ill-usage he had received from the thannah darogah, that he had been kept without food for four days. At the time his confession was made before magistrate, he was not in his senses. He calls three witnesses, Nos. 21, 22 and 23. The evidence of the witnesses do not prove this statement.

Prisoner, No 4, denies all knowledge of the dacoity, and declares that the confession made by him in the mofussil was forced from him by the ill-usage received from the police; that he has no recollection of that made before the acting magistrate. It might have been made at the persuasion of Buddee burkundaz. He calls no witnesses to support his statement.

Prisoners, Nos. 5 and 6, made the same defence. They deny having any thing to do with the dacoity; that they have been implicated by the prisoners, Nos. 3 and 4, owing to an ill-feeling existing between them; that the seventeen witnesses they have called, will prove they were during the night of the 24th Chyte, i. e. 8 P. M. of that day till 3 A. M. the following day, at a *nautch* held in their village.

Eleven witnesses were examined. They, one and all, came with the same story, but on cross-examination, their evidence was found to vary so much, as no reliance whatever could be placed on its truth; they were unsuccessful in proving *alibis*.

Prisoner, No. 7, in defence, denies the crime, and states first that the darogah of Kissennuggur has an ill-feeling against him, and has tutored the prisoners, Nos. 3 and 4, to implicate him, and in like manner instructed the other witnesses; denies his having been at mouzah Patra, on the 24th Chyte; that on the 15th or 16th of that month, he went to Kutwa and returned to his own house at mouzah Boolkoona, five *coss* distant from Patra; on the 24th at about noon, remained there the whole day and night. That the property (No. 1, *thalee*) is his property; that it was placed in the upper part of his house for safety with other things. He purchased the *thalee* eleven or twelve years ago, at Poorundapore bazar.

He calls thirty-one witnesses to prove this statement; fourteen witnesses were examined as to the *alibi*, the recognizing the property as prisoner's and to his good character. The unexamined witnesses were called to prove his character, as being good. The testimony to prove the *alibi* is considered untrustworthy. Though each witness stated to his having seen the prisoner at the village of Boolkoona on the 24th instant, both in the daytime and night, nevertheless in their cross-examination, they break down,

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and from the whole tenor of their statements, they seem to have been well tutored before coming into court. Those called to prove the *thalee* as prisoner's, and gave evidence before the magistrate, if their evidence is to be relied on, have proved it so, but those examined only before this court, on this point, have totally failed. To test these witnesses' evidence a *thalee* was shewn them taken out of the *mal khannah*, which on examining thoroughly, they declared as the property of the prisoner, and afterwards denied any knowledge of the stolen one, which was also shewn to them.

After giving my serious attention to the proofs adduced for the prosecution, to the defence made by the several prisoners, and to the whole circumstances of the case, I am of opinion that they, one and all, are guilty of the crime charged against them; I consider that the three prisoners, Ramchunder Ghose, Sreeram Mundle and Prankrishto Kandee, were the leaders of the gang, and that the other two were engaged for the occasion; that the circumstance of the case is greatly aggravated by the cruel act of Prankrishto in burning the woman, Dassee, on the parts of the body, as shewn in the evidence. The dacoits being armed with swords, and three of them, prisoners Nos. 5, 6 and 7, discharged police burkundazes, adds considerably to the crime. Under the impression that they one and all are part of a professional gang, and that this is not their first expedition of a similar kind, I would recommend they be transported beyond the seas for fifteen years with labor and irons.

I now sentence the prisoners to sixteen (16) years' imprisonment, including (2) two years, in lieu of stripes, with hard labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Having heard Mr. Norris on the part of the prisoners Nos. 5, 6 and 7, and after perusing the petitions of appeal preferred by the prisoners Nos. 3 and 4, together with the whole proceedings held on the trial of these men, we feel it impossible to uphold the conviction in this case.

The chief witnesses for the prosecution are two chowkeedars, who allege they were passing the night at the prosecutor's house between their rounds, and were seized and bound by the dacoits on their first entrance into the premises. On the day following the robbery, these men as well as the inmates of the house gave no clue to the perpetrators of the robbery to the police jemadar, who first came to the village, but on the same day one of them stated to the darogah that after he was released by the prosecutor from the bands fastened on him by the dacoits, being quite at a loss as to the parties who committed the robbery, he traced the tracts and footsteps of the dacoits to the village of Patra where all the prisoners resided, and then told the Police he suspected prisoners Nos. 3, 4, 5 and 6; in fact, (he added)

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that Nos. 3 and 4 had bound him, and No. 5 had called himself the Ballagushtee jemadar. On this information, these four were apprehended, and Nos. 3 and 4 confessing, implicated the prisoner No. 7. Subsequent to this the two chowkeedars, and the inmates of prosecutor's house deposed before the magistrate, and the sessions judge to the recognition of *all* the prisoners.

The statement of the chowkeedar, who first gave this clue, appears far too inconsistent for belief. If he recognized those who bound him at the time of the robbery, it is most probable he would have at once communicated the fact to the jemadar, instead of following up the doubtful traces of the dacoits to their village and then accusing them; his assertion therefore that he had so seen and recognized these three men, on the night of the dacoity, is utterly unworthy of belief, and the subsequent allegations of the witnesses to the same effect, are in our opinion equally improbable. Rejecting in toto the evidence of identity, there is nothing against the prisoners, but the confessions of Nos. 3 and 4, and the discovery of a *thalee* in the house of No. 7; the confessions were repeated at the foujdary, but at the sessions the prisoners pleaded *not guilty*, and allege their former admissions were the effect of intimidation and fear produced by the threats of the police.

There is certainly nothing on record to support them, and the prisoners were kept thirty hours at the thannah before they were taken down; no property was pointed out, nor was any clue afforded by them to the discovery of any part of the plunder. Regarding the accusation of these men by the witness Dhonoo chowkeedar and the recognition of them by the other witnesses as undoubtedly false and worthless, we cannot rely on the confessions themselves as genuine without a single credible circumstance in support of their truth, and without attempting to account for the fact of their confession having been repeated to the magistrate, we must decline to uphold the conviction on this data alone, when so much which has been relied upon by the sessions judge in support of them, has been considered by us inconsistent with probability and truth.

Under the view we have taken of the evidence, the finding of the *thalee* in the house of the prisoner No. 7 is the only matter that affects him, and although the sessions judge deemed the fact of the prisoner's witnesses' inability to distinguish this from a similar article to be conclusive against him, we observe that the prosecutor's witnesses' powers of discrimination were not put to the same test; the witnesses to the identity of the *thalee* are those to whose evidence we have seen reason to object on other points, and there is no reason why we should rely upon it on this; with reference therefore to the foregoing remarks we acquit all the prisoners.

PRESENT:
J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND JOWAHIR SINGH,
versus
RAWUT SINGH (No. 2,) HURUCK SINGH (No. 3,) AND CHOORUN KAHAR (No. 4.)

Patna.
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Case of RAWUT SINGH and others.

Two prisoners convicted of affray with culpable homicide, sentenced to fourteen years' imprisonment, and a third prisoner to five years' imprisonment.

CRIME CHARGED.—1st count, wilful murder of Doobree Roy, and 2nd count, affray attended with homicide of Doobree Roy.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 27th June, 1854.

Remarks by the sessions judge.—It appears from the evidence that the lands of Chuk Masooma in mouzah Beeharee Beega, pergunnah Salemabad, had been, prior to the occurrence which I now have to report, held in lease by one Gheena Singh nearly related to the prisoners, Rawut Singh and Huruck Singh. On expiration of Gheena Singh's term in 1260, F. the village was given by the proprietors to Rughobur Singh under a fresh engagement, and this transfer by exciting the jealousy of the ousted tenants, led to the murder of Doobree Roy a cultivator, who had recently taken engagements from the new lessee.

It is proved that on the night of the 8th April last, about 9 o'clock P. M. the two prisoners, Rawut Singh and Huruck Singh accompanied by Gheena Singh, all three of whom reside close to the scene of the outrage, having armed themselves with swords and collected a large body of men of whom the prisoner Choorun Kahar was one, proceeded to the stack yard where the deceased was sleeping and declared their intention of taking away the recently-cut crop. Witnesses,* Nos. 1, 2, 3, 4, 5, 7, 8, 9 and 10, were also lying out on the same spot for the purpose of watching their grain, but ran away on seeing the numerous body of men which had assembled. The night was moonlight, and the parties were, therefore, fully recognized. The deceased refused to surrender possession of the crop and thereupon incensed at the opposition, Rawut Singh and Huruck Singh struck him four blows with their swords from the effects of which, he died seventeen days afterwards. The wounds were very severe and the native doctor deposes to being at once convinced of their dangerous character, on examination of the deceased two days after the occurrence. One blow divided the extensor tendon of the right leg, another cut through the bones of the right hand

*1, Nirput Sonar.
2, Meetun Sonar.
3, Khurugdhary Roy.
4, Golur Roy.
5, Chooty Kahar.
7, Bhuttan Mullah.
8, Lilloo Roy.
9, Chand Khan.
10, Nutboo Singh.

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and two others were inflicted on the back and side. The two depositions made by the deceased on the spot and subsequently at the thannah on the 9th and 13th of April, respectively, are consistent. On both occasions he charges Huruck Singh and Rawut Singh with having wounded him, and the witnesses marginally* noted, confirm his statement in every particular.

* No. 1, Nirput Sonar.
2, Meetun Sonar.
3, Khurugdhary Roy
4, Golur Roy.
5, Chooty Kahar.
7, Bhuttan Mullah.
8, Lilloo Roy.
9, Chand Khan.
10, Nuthoo Singh

For the defence it is pleaded by Rawut Singh that the tenancy of Gheena Singh as lessee had not expired, that the deceased and others were the aggressors. That an affray did not however take place since some of the party suggested to Nuthoo Singh, witness No. 10, that he should wound the deceased who was his uncle, and thereby establish grounds for bringing an action against the prisoners and get them ousted by means of a false case in court. This absurd story is of course unworthy of belief, and is made still more preposterous by the prisoner's statement of his having climbed up a tree, on the top of which he sat and watched the proceedings of the mob below him His sword which is identified by the witnesses was found afterwards under some sheaves of corn belonging to the prisoner Choorun. This man and Huruck Singh both plead an *alibi,* but the evidence of their witnesses is worthless.

This case appears to me a very aggravated one. There was no disputed possession. On the contrary it is clearly shewn that Rughobur Singh, the new lessee, had been in undisturbed tenancy of the land for months previously. The prisoners, with deliberate intent to commit an unlawful and violent act, came at night with swords and, supported by a large body of their dependents, cruelly murdered an unoffending ryot. I can see no extenuating feature in the case, which induces me to recommend the prisoners to mercy. I convict Rawut Singh and Huruck Singh of wilful murder and recommend that a sentence of death be passed upon them, and Choorun Kahar as an accessary and abettor, I think ought to be transported for life. The *futwa* of the law officer convicts on the first charge in the indictment, and declares the sentence to be discretionary with the court.

Gheena Singh the former lessee of the lands and one Shoodeal were released by the magistrate, as he was not satisfied with the evidence against them. The record shews that these prisoners were not in the first instance named by the deceased Doobree and his witnesses, as being present with the prisoners when the assault took place. Notwithstanding this omission, the darogah detained Gheena Singh at the thannah for several days, and on this account he was removed from his appointment.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The case has been referred by the sessions judge to the Court, for a capital sentence on the two first prisoners convicted by him of wilful murder, and one of transportation for life on the third as an accessary and abettor of the murder. Aftabooddeen, pleader of this Court, has been heard on the part of the prisoners, but he has been unable to point out any material discrepancies in the evidence on record, or to shake its general credibility. We concur with the sessions judge in considering that the proof is sufficient to convict the prisoners, Rawut and Huruck of wounding Doobree Roy, deceased, and Choorun Kahar of, being an accomplice in the same. The defence set up to meet the facts is, that the deceased was wilfully wounded by his own nephew in order thereby to support a false charge against Gheena Singh, but the witnesses, cited in proof of this, are utterly unworthy of credit.

We cannot, however, agree with the judge in thinking that there is credible proof of the deliberate nature of the attack, assumed by the sessions judge, as the grounds of convicting the prisoners as principals and accessary in wilful murder; on the contrary we see reason to infer that the wounding and death of the deceased was the consequence of a mutual affray between the adherents of the rival farmers.

There are grounds for believing that the police have allowed the case to be much exaggerated against Gheena Singh's party, and to make it wear the appearance of a preconcerted attack on his part, but we find from the first reports of the police, that petitions had been presented at the thannah by both parties, praying for assistance against each other, and the darogah, on the day preceding the night on which the case occurred, had summoned both the principals before him, and warned them against committing a breach of the peace. It is more probable under these circumstances, as the police wished to favor one party, that the whole merits of the case have not been properly disclosed in the reports, but as both parties were evidently at the time expecting some hostile attempt on either side, it is but reasonable to infer that they were also prepared for resistance, and that when the alleged attack on the stack-yard took place, that deceased and his fellow-servants and ryots did do their best to resist and repulse their assailants. The probability of this is borne out by the fact, that although a large quantity of grain is said to have been plundered and carried away, no steps were apparently taken either to trace out the plunderers or to recover the grain.

We convict the prisoners, therefore, on the second charge against them namely, *of affray with culpable homicide*, and with reference to the acts proved against them, respectively, we sentence Rawut and Huruck to fourteen years' imprisonment with labor, and Choorun Kahar to five years' imprisonment.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

PURSOOTUM OJAH.

24-Pergunnahs.

1854.

August 14.

Case of PURSOOTUM OJAH.

The prisoner, a sepoy, charged with the wilful murder of another sepoy acquitted, owing to the insufficiency of the evidence.

CRIME CHARGED.—Wilful murder of Dwarkanath Singh.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 27th July, 1854.

Remarks by the officiating additional sessions judge.—The prisoner and the deceased Dwarka Singh, lived in the same hut and were *sepahis* attached to the 48th regiment N. I. On the night of the 14th May last, the deceased was murdered under the following circumstances.

A *sepahi* of the name of Jodha Singh, had returned from leave, and was invited by the prisoner to a feast. On the day of the banquet, Jodha Singh received his back pay amounting to sixteen rupees and brought it to the prisoner's hut, while the deceased, Mehedi Singh, and Miaram, *sepahis* of the same corps were present. The money was subsequently missed and suspicion of the theft fell on the deceased The prisoner seems to have taken up the case with great warmth, and regarded it as a stigma on his character and reputation as a friend and a host to be wiped out with blood alone. He was heard to mutter threats of vengeance, and to avow that he would one day kill the deceased. Though living together, deceased and he were never seen to speak to each other again after the affair of the robbery. The night of the murder was ushered in by a storm of wind and rain. It cleared up about 8 o'clock, and at this time Mehidi Singh chanced to pass the door of the prisoner's hut. There was a light in it, and the door was ajar. He looked in and saw the prisoner standing over the deceased with a club in his right hand, his left hand grasping the throat, and his left knee pressing the chest of his victim who was lying in a *chorpoy*, Mehidi Singh got alarmed, and ran off to a comrade's hut, where he enigmatically disclosed what he had witnessed, saying that at Rollcall (which was close at hand) a discovery would be made, for it was impossible to say what might happen with a highly wrought feeling of indignation entertained by the prisoner towards the deceased. About this

Witnesses Nos. 1—4.

Nedhan Singh, sepahi witness No. 3.

Witness No. 1.

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time the prisoner left home and went to Nedhan* *sepahi's* hut to smoke. The prisoner had not long been there, when the *dhoby* who washed for the deceased brought home some cloth. He went to the deceased's hut and called him by name. Receiving no answer he repeated the call, when the prisoner told him to leave the cloth, as Dwarka Singh might possibly be out. The washerman refused to do this on the plea that Dwarka had come for it a while ago. On this Nedhan Singh desired him to go into the hut and see if Dwarka were there. He did so and returned saying that Dwarka was sleeping on his *chorpoy*, but that he could not awake him. Nedhan then told the prisoner to bring a light and see what had happened to his chum, suggesting that he might be ill, but no persuasion could induce him to do so. At length Nedhan went over to the hut of the havildar of his company and getting a light, entered the deceased's hut followed by the havildar and several *sepahis*. It was remarked that the prisoner was not one of the party and that he remained moodily and sullenly seated where he was, though the distance between the huts was only about ten yards. There they found the deceased in the agonies of death with his skull severely fractured and blood flowing from the wound. He was removed to the hospital in a *dooly* without loss of time and expired shortly afterwards, having been insensible and speechless from the time of his being discovered to his death.

* Witness No. 3.

Gunga Singh, witness No. 5.

Shaikh Dilawur, witness No. 6.

A *sepahi*,† who was on sentry duty on the night of the murder, saw the prisoner leave his quarters about midnight, having a *lota* in his hand and a *merzie*, or jacket, on his person. He remained absent an hour and when he returned, the jacket was not on his person, but folded up under his arm. It together with a *dhoti* was found the following morning in the prisoner's hut and both identified as his property by his washerman.‡ The clothes bore stains and spots as if of blood effaced by washing, but these appearances were scarcely perceptible on the garments when produced on the trial.

† Moti Singh, witness No. 7.

‡ Debi Dhoba, witness No. 9.

A general search of the neighbouring tanks was ordered, to ascertain if any trace of the instrument with which the murder was committed could be found and a heavy club was produced from one of them. This was in all probability the implement used on the occasion, as it is a crooked unseemly piece of wood, utterly useless except for culinary purposes, to which under other circumstances, it would have been devoted instead of being made away with.

Giridhari Mehtar, witness No. 8.

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The *post mortem* examination of the body shewed that death was caused by extensive injuries in the head, caused by some heavy blunt instrument similar to the club produced on the trial. The skull was severely fractured and the entire surface of the brain conjested, showing that great violence was used.

The prisoner denies the charge and declares himself the victim of Mehidi Singh's malevolence.

The *futwa* acquits the prisoner on the ground that the direct testimony against him is not to be trusted.

I dissent from this verdict, because I see nothing that makes me doubt the truth of Mehidi Singh's evidence. He has no object in criminating the prisoner. He has always lived on terms of friendship with him, and is a townsman. It is true that he was taken up on suspicion of being concerned in the murder, and did not make the disclosures till he had been two or three days in confinement. Nevertheless, the communication, when made, was quite voluntary, and he assigns a good cause for having delayed to make it, namely, the disgrace that would for ever attach to his name if the execution of a Brahmin happened to result from any evidence he gave. The prisoner is a Brahmin and our native soldiery are remarkable for their tenacity of religious prejudices. Again, supposing he had made admissions of indirect guilt, which is all with which he was charged by the military authorities, and with the view of eliciting the truth had been conditionally pardoned, would not his evidence have been received against the prisoner? Undoubtedly it would. Why not then when it is tendered fully and unconditionally? It is argued that self-exculpation induced the disclosure, but this is bad reasoning; for there is not a tittle of evidence against the witness, and his trial must have eventuated in his release. Perceiving then the total absence of all motive in Mehidi Singh, either to murder the deceased or accuse the prisoner falsely, and therefore believing in his testimony, which directly charges the prisoner with the commission of the deed, and taking into consideration the strong circumstantial evidence against the prisoner on the trial, I convict him, Pursootum Ojah, of the wilful murder of Dwarka Singh *sepahi*, and seeing nothing in the case to render him an object of mercy, recommend that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The sessions judge rests his conviction of the prisoner mainly upon the evidence of the witness Mehidi Singh. To us it appears that there are insuperable objections to receiving this man's evidence with that confidence in its truthfulness, which should alone warrant our convicting the prisoner, on so grave a charge.

We find that Mehidi Singh, Nidhan and the prisoner Pursootum Ojah were all, in the first instance, taken upon suspicion

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and kept in confinement, and although the murder occurred on the night of the 14th of May, it was not till he had been in confinement for some days, that Mehidi Singh made the disclosures, which are now taken as evidence against Pursootum. This delay would alone be sufficient to throw some doubt upon his statement, but the statement, does not in itself bear the impress of truth, and is not borne out, in one most essential particulár, by two of the persons named in it. Admitting that there may be generally a strong indisposition, amongst the people of this country, to bring a Brahmin within the risk of an ignominious death, we yet are not prepared to believe that this feeling was so strong, and ever present with the witness, as to have utterly paralyzed him, on seeing the prisoner in the act of murdering a fellow soldier. On calm reflection, he might have wished, by his silence, to avoid criminating a Brahmin, but we can scarcely believe, that seeing what he says he did, he should not either have helped Dwarka Singh himself or have called out for the assistance of others, who were actually within sight. Retiring quietly however from such a scene, he asserts, that he went to the quarters of Dulab Singh and Rindee Singh, and there gave ambiguous hints of what he had witnessed; and the sessions judge apparently receives this statement without question. These men were not examined at the trial, and could not therefore there refute this statement, but we find, that in the fouzdary court they did so distinctly, and denied that the witness Mehidi Singh had gone to their quarters at all, that night.

As far as the record shews there is nothing whatever corroborative of a single occurrence mentioned by Mehidi Singh, on the night of the murder, and if Pursootum Ojah was really concerned in it, and Mehidi Singh cognizant of the fact, we feel certain that the account given by him is not the true one. The circumstantial evidence is in our opinion weak and inconclusive. The alleged cause of enmity against the deceased, applies equally to Mehidi Singh, in whose hands the money of Jadoo Singh appears to have been placed, on the occasion of the feast given at the end of March last; while the medical evidence leaves it extremely doubtful, whether the marks on the clothes of the prisoner were really marks of blood, and can be taken as part of the strong circumstancial evidence alluded to by the sessions judge. There is in fact no evidence, that the prisoner ever either entered the hut, or left it, at any particular time on that evening, when the deceased was known to be there.

There being, in our judgment, no substantial proof against the prisoner to convict him directly with the actual perpetrature of the murder, we consider him entitled to his acquittal on the charge, and acquit him accordingly.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND JUGGERNATH DASS,

versus

PANNOO SHAH.

Moorsheda-bad.

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Case of PANNOO SHAH.

The prisoner was acquitted, the proof against him, relied on by the sessions judge, being considered by the Court insufficient for his conviction.

CRIME CHARGED.—Burglary in the shop of the prosecutor, Juggernath Dass, from which 192 rupees in cash was stolen.

CRIME ESTABLISHED.—Accessaryship before and after the fact of burglary.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 16th June, 1854.

Remarks by the sessions judge.—In this case, the jurors, who sat with me on the trial, declared that there was no proof against the prisoner of the offence with which he was charged in the calendar, but from the circumstances of the case, they entertained a suspicion against the prisoner.

There is not evidence on the record to prove that the prisoner actually committed the burglary, but there are grounds for a strong legal presumption, that he was accessary to the crime before and after the fact.

1st. On the night of the 21st April, 1854, the wall behind the shop of the prosecutor was broken through, and cash to the amount of Co.'s Rs. 192, which was kept in an open box in the shop, was stolen. The prisoner was a servant of the prosecutor and sleeping outside, but in the *verandah* of that shop; he told the chowkeedar, Baharwoola, the same night, when he came there on his rounds, that he heard a sound as of some one breaking a wall "*khut khut*" coming out from behind the shop, and requested him to go and see what it was. The chowkeedar stated, that when this was told him by the prisoner, he could hear no sound, but on going behind the shop, he saw a hole made in the wall.

2nd. Some four or five days after the occurrence, the prisoner purchased several pieces of new cloth to the amount of 39 Rs., the prosecutor hearing of it, and suspecting him, reported the circumstance to the police, and caused his arrest with the cloth in his possession. The prisoner, when arrested, stated that he bought the cloth for and on account of one Woodoymul, from whom he had received money for the purpose; and again, before the magistrate, he said that he received money from his mother, and bought the cloth; and his mother in a

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petition, in order to confirm the statement of her son, stated that she borrowed some money from Oodoyram and Gyan Chand and gave it, together with some from her own pocket, to her son, for the purpose of trading in cloth. Oodoyram denied that any money had been given by him for the purchase of the cloth.

The hole that was made in the wall from its unusual height from the ground was evidently made by unpractised hands. No regular burglar could have made it.

The suspicion of the prosecutor rested at first upon a person living on the premises, who had the key of the outer door of the *verandah*, through which those who made the hole in the wall, must have entered, and he did not suspect the prisoner until the pieces of new cloth were found in his possession. There could not be a doubt, but that the prisoner who received only 3 Rs. per mensem, wages as a servant of the prosecutor, came by the money 39 Rs. with which he purchased the pieces of new cloth by unlawful means. It might have been obtained lawfully from some other source. It is not proved that it was the actual money of the prosecutor which was stolen, but taking the fact of the sudden enrichment of the servant with the recent loss of the master, and his inability to prove how he came by the goods, with the singular circumstance of his hearing the sound of some one breaking the wall, when the chowkeedar at his side could hear nothing, and the still more singular circumstance that immediately after on proceeding from the one *verandah* to the other, the hole in the wall was discovered; the deed completed, and the money stolen, and the fact that had the burglars been breaking the wall *at the time* when the burglarious sounds were heard by the prisoner, it is most probable that some person would have been seen escaping, if not apprehended, by the chowkeedar, and also that the knowledge of the money being in the *inner* room, from which it could only be taken by a burglarious entrance through the wall, could only have been known to the prisoner as a servant and communicated by him, although the case is a peculiar one, and the proof might not be considered sufficient on strictly legal grounds, yet the circumstantial evidence is, to my mind, so strong, that I can come to no other conclusion than that the prisoner is guilty of being accessary to the crime before and after the fact, and I therefore sentenced him as stated in the proper column.

Sentence passed by the lower court.—Imprisonment for (4) four years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick.—The prisoner not being able to account satisfactorily for the possession of 40 Rs. with 39 of which he purchased cloth, doubtless laid him open to strong suspicion of being concerned in the recent burglary at his master's

house. As however, he had been several years in the service of his master formerly, and was again engaged in his service, and his master did not at first suspect him, though he did a former servant and another person, and as prisoner has brought several witnesses to testify to his holding a good character, and being occasionally employed in carrying about clothes for sale, the suspicion against him of being an accomplice in the burglary at his master's house, does not amount to that degree of violence, which warrants a conviction of the crime.

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The Court therefore, direct his release.

Mr. B. J. Colvin.—I concur.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MANICK GHOSE, GWALLAH.

Hooghly.

1854.

August 17.

Case of MANICK GHOSE, GWALLAH.

Prisoner convicted on his own confessions of having belonged to a gang of dacoits, sentenced to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 22nd July, 1854.

Remarks by the officiating sessions judge.—The prisoner, Manick Ghose, Gwallah, No. 3, was committed for trial by Mr. E. Jackson, commissioner for the suppression of dacoity, upon the charge of having belonged to a gang of dacoits, in his own full and complete confession.

The prisoner is a native of Paltah in the Nuddea district, and has recently resided at Nyakole, in the jurisdiction of the Kotwah thannah in the same district, he is aged about thirty years. He pleaded guilty to the charge, and fully admitted the confession made by him before the committing officer, in which he acknowledged that he had been concerned with Buddun Ghose Sirdar, Koober Ghose and others, in fifty-one dacoities committed on river and on land, in the Burdwan and Nuddea districts, during the past fourteen years.

These confessions are verified by the attesting witnesses,* and the records of twenty-seven of the fifty-one cases mentioned by the prisoner, which have been received from the magistrate's offices, prove the particulars of the several cases to be as detailed by him.

* Nos. 1 and 2.

I convict the prisoner of the charge, and with reference to the commissioner's intention of retaining him as an approver, I have

1845. the honor to recommend that a sentence of imprisonment for life be passed upon him.

August 17.

Case of MANICK GHOSE, GWALLAH.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) It is proved that the prisoner, before the commissioner for the suppression of dacoity, made free and voluntary confession to a number of dacoities, as set forth in his detailed statement, and he now pleads guilty, in the sessions court, to the crime with which he is charged. We accordingly sentence him to be imprisoned for life with labor in irons, in transportation.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT PLEADER, AND SHEIKH ELLAHIE BUX,

versus

CASHEE PANDEY.

Sarun.

1854.

August 17.

Case of CASHEE PANDEY.

Conviction and sentence passed by the sessions judge in a case of riot with culpable homicide, upheld in appeal.

CRIME CHARGED.—1st count, riot attended with the culpable homicide of Ralick Bux; 2nd count, aiding and abetting in the above.

CRIME ESTABLISHED.—Being an accomplice in the riot with the culpable homicide of Ralick Bux.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 31st May, 1854.

Remarks by the officiating sessions judge.—This riot attended with the homicide of plaintiff's son originated in a case of cow-killing, and several of the parties concerned were convicted at the sessions held on the 10th September and 7th October last. The defendant Cashee Pandey now present, was from the first named as one implicated in the crime, and the evidence of plaintiff and three eye-witnesses, Nos. 1, 2 and 3, clearly convicts him of having taken an active part in the affair. He pleads absence at the time, but the witnesses, Nos. 4, 5, 6 and 7 produced, do not in my opinion at all establish his defence. The case has been tried with the aid of a jury of three, one Mahomedan and two Hindoos. The two Hindoos found that the prisoner was present at the riot, but that he did not take part in the homicide. The moulvee convicts him of being an accomplice in the riot, attended with the culpable homicide of Ralick Bux, and considering this fully proved against the prisoner and the active part taken by him, I think a sentence of eighteen

months' imprisonment from this date with labor, commutable to a fine of 50 Rs. is the least that will satisfy the ends of justice, the fine payable within seven days, reference being had to the sentences passed on the parties first convicted.

1854. August 4. Case of CASHEE PANDEY.

Sentence passed by the lower court.—To be imprisoned for a period of (18) eighteen months from the 31st May, 1854, and to pay a fine of 50 Rs. on or before the 8th June next, or in default of payment to labor until the fine be paid, or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The witnesses cited by the prisoner can prove nothing in support of the *alibi* set up by him in his defence. The witnesses for the prosecution have, from the first, named the prisoner and identified him at the sessions. We see no reason to interfere with the sentence passed on the prisoner, and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

SHUNKER ROY.

Bhagulpore. 1854. August 17. Case of SHUNKER ROY.

Prisoner convicted of wilful murder of his wife, sentenced capitally. Improper conduct of the police darogah noticed.

CRIME CHARGED.—Wilful murder of Musst. Sunthee, his wife, with a *phursa* (a kind of axe).

Committing Officer.—Mr. R. O. Heywood, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 25th July, 1854.

Remarks by the sessions judge.—The prisoner pleads guilty.

The prisoner, Shunker, one of the semi-barbarous Bhooyan tribe, inhabiting the southern parts of the district, left his own village of Soonder More, and with his wife, Sunthee, went to Mouza Jamoo Godar to the house of his relation, Bheem Roy, his mother, Suhodurea, (witness No. 11) following him there, and remained some days in the same house, sleeping in the same room with Sunthee. One night Shunker murdered his wife with an axe and fled. Sunthee's child crying, Suhodurea awoke and found her daughter-in-law weltering in her blood. It is not very clear, whether the witnesses, Nos. 11, 12 and 13, examined by me saw the prisoner in the act of running away with the murderous weapon in his hand, as stated by them before the magistrate, but this is of minor importance; they had seen deceased in health over night and in the morning she is found dead with

1854. August 17. Case of SHUNKER ROY.

large wounds on her neck and shoulder, an inquest was held on the spot, and the dead body fully indentified; it was subsequently sent into the station and examined by the sub-assistant surgeon, (witness No. 5) and his evidence proves the existence of dangerous wounds, though owing to the decomposed state of the corpse, he could not swear to their having been the cause of death. The prisoner fled directly he had committed the crime, and was not apprehended till eleven days after the occurrence; he confesses freely and simply that he killed his wife, Sunthee, with a *phursa*, because she had intrigued with one Rughonath Roy.

The jury return a verdict of guilty of wilful murder, in which I concur.

The prisoner confesses his crime without pleading any thing in extenuation beyond his victim's imputed infidelity; he is a strong able-bodied man of few words and very stolid appearance; his confession has been constant and unwavering from the thannah to this court, and the evidence fully corroborates his story. I must recommend that he suffer the extreme penalty of the law.

Remarks by the Nizamut Adawlut.—(Present: Messrs J. Dunbar and H. T. Raikes.) The witnesses depose to seeing the prisoner running from the house with a *kodallee* in his hand after the murder had been committed, and he has himself confessed throughout, that with that weapon he killed his wife. Of his guilt therefore of the crime charged, no doubt can be entertained. He alleges as his motive for taking the life of his wife that she intrigued with one Rughonath Roy, but there seems no good reason for this assertion, and we are inclined to doubt the fact of its having been originally made by the prisoner. His statement before the police is, that Rughonath Roy was seen by him, on the night of the murder, bringing his wife back to the prisoner's house, which so confirmed his suspicions of her fidelity that he fetched the *kodallee* and killed her. Before the magistrate he pleaded having actually caught Rughonath Roy in the act with his wife, that the man escaped while he went for the *kodallee,* and he then vented his anger on her and killed her on the spot. At the sessions when pleading guilty, there is merely the general assertion of his wife's infidelity with Rughonath Roy. None of the witnesses allude to the existence of such a cause for the deed, and his mother declares that the prisoner and his wife frequently quarrelled regarding the attentions of another man, Mungul Roy to the prisoner's wife. It is true the darogah openly states his suspicions to be in favor of the prisoner's story, and that the witnesses are deterred from implicating Rughonath, because he is the *kutkenadar* of the village, but he can assign no other reason than this man's lukewarmness in assisting him to arrest the

prisoner, after his flight, and his residing near their homestead. Surmises founded upon such grounds only should hardly have been allowed expression, and the Court are surprised to find that the darogah on these frivolous pretences actually apprehended and forwarded Rughonath Roy to the magistrate, as being indirectly concerned in the crime. The Court trust the darogah's conduct in this respect was not overlooked by the magistrate, and the sessions judge will be requested to ascertain what steps were taken in the matter, and if necessary bring it to the notice of the superintendent of police; as the Court have seldom seen a more gross case of abuse of power, than this on the part of the police, as far as they can judge from the facts on record.

1854. August 17. Case of SHUNKER ROY.

As the perpetration of this crime by the prisoner seems to have arisen from some vague jealousy, for which there was no real foundation, we see no circumstance therein for mitigation of punishment, and therefore convict him of the murder charged, and condemn him to suffer death.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MOHARAJ SINGH.

Sarun.

1854. August 17. Case of MOHARAJ SINGH.

CRIME CHARGED.—1st count, being an accomplice in the wounding of Boolakee Rai with a sword and, 2nd count, aiding and abetting in the same.

CRIME ESTABLISHED.—Aiding and abetting in the wounding of Boolakee Rai with a sword.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 12th June, 1854.

Conviction and sentence of the sessions judge in a case of wounding affirmed in appeal.

Remarks by the officiating sessions judge.—The principal in this case was convicted at the sessions, held on the 6th July, 1853,—this defendant having at the time escaped apprehension. The evidence of three eye-witnesses, Nos. 1, 2 and 3, proves that he aided and abetted in the wounding of Boolakee by laying hold of him, while Mustan wounded him with a sword, and that he was on the spot, appears from the evidence of witness, No. 4. Before the magistrate, the defendant stated that he was not Moharaj Singh, the criminal named by the witness, but another man, the real defendant having run away. Here

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Case of MOHARAJ SINGH.

however, he says he had not his senses about him when before the magistrate, and he admits that his name is as noted, his father's name being Auchumbit Lal, which is also the statement of the witnesses. He denies the charge, but his witnesses, Nos. 5, 6, 7, 8, 9, 10 and 11, declare that they knew nothing about the case. The attack in this instance, is supposed to have been directed by another party, and arose out of a dispute regarding a female kept by him, as explained by my predecessor. The moulvee convicts the prisoner of aiding and abetting in the wounding of Boolakee Rai with a sword, and concurring with him in this opinion, I sentence the prisoner to two years' imprisonment without irons from this date, with labor commutable to a fine of 50 Rs. payable within one month.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The prisoner in his petition of appeal reverts to his first defence before the fouzdary, asserting that he has all along denied that he is the person accused by the prosecutor and witnesses at the trial of the principal defendant.

We find, however, that he admitted at the trial that he is Moharaj Singh, son of Auchumbit, and gave that name as his own, citing witnesses to prove that he had not taken part in the wounding charged against him, this, his witnesses could not do, and we see no reason whatever to interfere with the sentence passed on him.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

Sarun.

1854.

August 18.

Case of SHEOSUHIA RAI.

The Court dismissed the prisoner's appeal, and were of opinion that the sessions judge should have referred the case for heavier punishment.

GOVERNMENT AND BHEERGUNATH,

versus

SHEOSUHIA RAI.

CRIME CHARGED.—Wilful murder of Doorbejoy Rai.

CRIME ESTABLISHED.—Culpable homicide of Doorbejoy Rai.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 21st June, 1854.

Remarks by the officiating sessions judge.—The statement of plaintiff, and the evidence of witnesses Nos. 1, 2 and 3 in this case, shows that there was a dispute between the prisoner and some others about a field, when Doorbejoy came up and advised them not to quarrel. Sheosuhia, an enemy it seems of the deceased, enraged at the interference, instantly attacked him with heavy *lattee* and struck him four times, twice on the head,—th

blows being dealt with such force that the skull was split and death took place instantly. The prisoner pleads *not guilty* and shews that he was beaten by the plaintiff and others who first of all assaulted Bishonath, after whom he went to look, as he heard there had been a row. Five witnesses are produced in his defence, but of these one, No. 8, says he heard there had been a dispute between the prisoner and the deceased. The evidence of No. 9, shews him to have been present where the deceased was seen wounded, and is corroborated by that of No. 10, while the other two, Nos. 11 and 12, have nothing to say in his favor. Neither the prisoner nor his witnesses attempt to show that Doorbejoy Rai was struck by any other party, and there can be no doubt that the deceased was assaulted by the prisoner. The evidence of the civil surgeon proves that death must have resulted from the injuries inflicted. The moulvee finds the prisoner guilty of culpable homicide and I agree with him, and considering the punishment of seven years' imprisonment with labor in irons from this date not more than justice demands, I sentence the prisoner accordingly.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court see no reason for interference with the conviction and sentence passed on the prisoner, petitioner. They would moreover observe, that the evidence manifests the culpable homicide to have been of a very aggravated nature. Provocation there was little, or none; and the blows inflicted on deceased, by the prisoner, were most violent and repeated. The sessions judge should have referred this case for heavier punishment.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

ETBARRY KHULIFA.

Dacca.

1854.

August 18.

Case of ETBARRY KHULIFA.

The appeal of the prisoner convicted of perjury, was rejected.

CRIME CHARGED.—Perjury, in having, on the 29th April, 1852, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the judge of Dacca, in the case Myut Beebee versus Hussonoo and others, under Regulation XIX. of 1841, that he did not see the celebration of the *nicka* of the prosecutrix with Kheeder doctor, but merely heard of the same; and in having, on the 26th January, 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the judge of Dacca in the pauper case of Musst. Myut Beebee versus Hussonoo and others, under Regulation XXVIII. of 1814, that he was present and did see the celebration of her *nicka*, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Moulvee Mahomed Nazim, principal *sudder* ameen, exercising full powers of a magistrate.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 11th May, 1854.

Remarks by the sessions judge.—The prisoner was charged with having made contradictory statements as to the marriage of Myut Beebee, and on this marriage depended her claims, first in a matter pending under Act XIX. of 1841, and afterwards in a suit she wished to bring as a pauper.

The contradictory statements were fully proved by witnesses. The prisoner made a confused answer complaining apparently of having forgotten the circumstance.

Sentence passed by the lower court.—To be imprisoned for the period of five (5) years with labor and in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The depositions contain the contradictions charged against the prisoner. The case was properly committed to the sessions. We therefore see no reason to interfere with the sentence.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,
versus
MOSABDI SHEIKH.

Jessore.

1854.

August 18.

Case of MOSABDI SHEIKH.

Prisoner convicted of privity to murder, acquitted in appeal, no murder having been proved.

CRIME CHARGED.—1st count, wilful murder of Musst. Tota Beebee, on the night of the 10th March, 1854, corresponding with the 28th Falgoon 1260 B. S.; 2nd count, having suspended the body of the deceased with a rope round her neck with intent to conceal the fact of his having murdered her, and to make believe that the deceased hanged herself; 3rd count, being privy to the murder and absconding after the fact; 4th count, knowingly and wilfully concealing the murder by shutting the door of his house, and absconding for a period of seven days.

CRIME ESTABLISHED.—Being privy to murder.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 15th June, 1854.

Remarks by the sessions judge.—At half-past 5 A. M., 11th March last, prisoner, who was one of the jail guard, left his home, shut and fastened the door from outside; and as he had not returned by 11 A. M., a neighbour,* who is also a burkundaz, attached to the jail, went to the door, called for Tota Beebee, the prisoner's wife, but getting no answer, he went in and found her corpse suspended by the neck; her feet resting on the ground. He went to the thannah to give information, and on his way told another neighbour,† who went to the spot, and saw the corpse in the situation above described.

The darogah,‡ repaired to the scene of the occurrence and held an inquest in the presence of witnesses.§

The corpse was taken to the dead house, and the circumstance was mentioned that night (11th) to the civil assistant surgeon, who examined the body on the 13th.|| He deposes that "death was caused by suspension, that no marks of external injury were apparent, except the mark of the cord round

* Witness No. 4, Hingun Khan.

† Witness No. 5, Kulleemuddi Burkundaz.

‡ Witness No. 8, Mr. Mendes.

§ Witness No. 1, Tarachand Behara.
" " 2, Nazir Behara.
" " 4, Hingun Khan.
" " 5, Kulleemuddi Burkundaz.
" " 6, Pear Mamood.

|| " " 7, Dr. Palmer.

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Case of MOSABDI SHEIKH.

the neck and some contusions on the right arm." The body was not decomposed. There were no signs of disease.

None of the neighbours appear to have heard any noise in the prisoner's house on the night of the 10th. Previously some* of them had heard the prisoner and deceased squabble, but had never seen blows inflicted.

* Witness No. 5, Kulleemuddi.
" " 7, Khodabuksh.

There is however no cause shewn, which could have induced her husband to murder her. But on the other hand, it does not appear that she was suffering from any mental or bodily pain, so as to make it probable that she hung herself.

The prisoner saw her corpse hanging up, but took no steps to restore animation, nor did he give notice of the suspicious death to the police. Nor did he return to his duty, but absconded for a week.

He asserts that his wife hung herself and that he absconded in consequence and did not return for a week.

The jury acquit him of the 1st and 2nd counts, but deem him guilty of the 3rd and 4th.

Construction 985 rules that a person abetting suicide is punishable under section 3, Regulation VIII. 1799.

It is hardly to be credited the woman was so bent upon self-destruction, that with her feet resting on the ground she should noiselessly strangle herself with a rope. The prisoner does not attempt to deny concealment of what he should have revealed, i. e. the suspicious death.

I convict him of being *privy to murder*, and sentence him to three years' imprisonment from this date without irons and to pay a fine of 20 Rs., on or before the 25th instant, or in default of payment to labor, until the fine be paid, or the term of sentence expire.

NOTE.—Dr. Palmer informs me that he inspected the body on the 12th, but had occasion to go to a place eight miles off and did not return till dark. He examined the corpse on the next day.

I have explained to the civil assistant surgeon that his delaying *post mortem* examination so long was unsatisfactory.

I have reminded him that in a previous case, he was unable to pronounce a decided opinion as to the cause of decease, owing to delay in examining a body after its arrival, and I have called his attention to my letter No. 294, of 21st October, 1853, and para. 3, of the court's letter No. 1260, dated 4th November, 1853, regarding the necessity of examining corpses without procrastination.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow.) There is no proof whatever of a murder having been committed—the prisoner cannot therefore be convicted of privy to that crime. The prisoner awoke at night and saw his

hanging from a beam, he got alarmed and ran off as soon as daybroke, and after a while returned. The finding is a wrong one and the sentence extreme. The prisoner is released.

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Case of
MOSABDI
SHEIKH.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS. *Judges.*

GOVERNMENT, HOOSUN BUX AND ANOTHER,

versus

FEIZ BUX ALIAS FACHOO MEAH (No. 3,) OMRITRAM DOSS (No. 4,) SHEIKH SIRDAR (No. 5,) SHEIKH MOMEEN (No. 6,) BHERA CHUNG (No. 7,) SHEIKH MOKIM (No. 8,) OORJOONRAM DEB (No. 9,) SHEIKH KUTWAL (No. 10,) SHEIKH BELDAR (No. 11,) BROJOORAM DOSS (No. 12,) SHEIKH BAKEE (No. 13,) JUGGOO DOSS ALIAS JUGGUTRAM DOSS (No. 14,) RUGHOORAM DOSS (No. 15,) AND GUMBHEER (No. 16.)

Sylhet.

1854.

August 19.
Case of
FEIZ BUX
alias FACHOO
MEAH
and others.

Prisoners convicted of riot, attended with homicide, sentenced to various terms of imprisonment.

CRIME CHARGED.—1st charge, No. 3, wilful murder of Shumsher Kazee; 2nd charge, riot attended with the homicide of Shumsher Kazee; 3rd charge, No. 4, being an accomplice in the crimes contained in the 1st and 2nd counts; 4th charge, No. 4, riot attended with wounding of Bahadoor Khan; 5th charge, Nos. 5 to 16, being accomplices in the crimes contained in the 1st, 2nd and 4th counts; 6th charge, prisoners Nos. 3 to 16 with privity to the crimes contained in the 1st, 2nd and 4th counts.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 21st July, 1854.

Remarks by the sessions judge.—The prosecutor's statement is that a wedding was arranged between Hussen Bux, the son of Shumsher Kazee deceased and Mushturee Bebee, the daughter of Dhunbanoo, and that the neighbours had assembled together to celebrate the betrothment.

That the next day, the prisoner Feiz Bux accompanied by the other prisoners and persons unknown attacked Dhunbanoo's house and demanded the girl, stating that Kuntoo Roy the zemindar had declared she should be married to the prisoner Feiz Bux. That the prosecutor remonstrated, when the prisoner No. 4, struck him a blow on the head with a *lattee* and unded him, and that Shumsher Kazee the deceased who was his cutcherry at a little distance away, hearing the noise came

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hastily to the spot when he and Feiz Bux had a loud dispute. That Feiz Bux left Dhunbanoo's house and entered into his own, distant a few yards, and produced from thence a hog-spear with which he struck Shumsher Kazee in the throat thereby causing his immediate death. That the prisoner was thereupon seized and the spear was taken from him by Aser Mehomed.

This story was confirmed before the magistrate's court by eleven witnesses, but five only were examined by me, who fully bear out the prosecutor's story.

The witnesses to the *sooruthal* prove the wound in the throat and other witnesses depose to the almost immediate death of the deceased.

The prisoner Feiz Bux in his defence urges, that he was engaged to Dhunbanoo's daughter, and that the deceased wishing to obtain her for his son attacked the house aided by the witnesses for the prosecution, when a fight ensued and Shumsher Kazee was killed, but how he does not know. He named a large number of witnesses both before the darogah and magistrate, most of whom were examined, but they one and all failed to substantiate his story, while the greater part confirmed that of the prosecutor. Some witnesses examined on his behalf in my court deposed to the truth of the attack by Shumsher, but they are unworthy of any credit. They were not named by the prisoner either before the darogah and magistrate, and by their own account were mere casual passers-by.

Sheikh Sirdar, prisoner No. 5 denies any participation in the riot and states, that the deceased was killed in the manner related by the prosecutor and that he was accused by him as he refused to beat the assailants.

The other prisoners pleaded an *alibi* before the magistrate's court, and called general witnesses who deposed to the truth of their statements, but their evidence was not credited. They made the same defence in my court, but called no witnesses in support of it.

The assessors convict the prisoner Feiz Bux of the wilful murder of Shumsher Kazee and the others of being accomplices in the same, and in this verdict I concur.

From the evidence adduced, there is sufficient to shew that Feiz Bux was a discarded suitor of Musst. Mushturee Bebee, and that he naturally viewed her engagement with the son of the deceased with great dislike, but neither this circumstance nor the abuse probably lavished on him by the deceased, will justify the deliberate act of leaving the house, where he was, for the purpose of bringing so deadly a weapon as a hog-spear and with which he immediately ran the deceased through.

The crime committed is clearly murder, but a sentence of imprisonment for life in banishment beyond seas will, in my opinion, be sufficient for him.

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The other prisoners, though accomplices in the eye of the law as aiding Feiz Bux in an illegal act, are not shewn to have done more than to have aided him in his endeavours to obtain possession of the girl, and a lenient sentence will therefore suffice for them. Omritram prisoner No. 4, however, is more guilty than the rest, having struck the prosecutor a severe blow in the head and to him therefore, I would award fourteen years, and to the remaining prisoners seven years each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) In our opinion the evidence proves that the prisoners were acting together in concert, with the object of preventing the marriage of Hussen Bux with Dhunbanoo's daughter, by carrying off the girl, and in furtherance of their common design, Shumsher Kazee was killed. As, however, there is trustworthy evidence showing that Feiz Bux was the person by whose hand Shumsher was slain, and that Omritram struck Bahadoor Khan with his *lattee*, we convict all the prisoners of riot attended with homicide as charged in the second count of the indictment, and sentence Feiz Bux to imprisonment for life in transportation, Omritram to imprisonment with labor for seven, and the rest for five years.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

RAHMUT ALLEE,

versus

ONGEOOREE (No. 1) AND MONGREE (No. 2.)

Arrakan.

1854.

August 21.

Case of ONGEOOREE and another.

Two prisoners charged with river-dacoity, convicted of robbery attended with wounding, endangering life, and sentenced to transportation.

CRIME CHARGED.—River-dacoity, attended with wounding and plunder of Rs. 380 in cash.

Committing Officer.—Mr. W. T. Law, 2nd principal assistant commissioner of Akyab.

Tried before Capt. G. Faithful, officiating commissioner of Arrakan, on the 5th of July, 1854.

Remarks by the officiating commissioner.—The case was committed by Mr. W. T. Law, 2nd principal assistant to the commissioner of Arrakan on the 16th June, 1854.

The circumstances of this case are as follows: The prosecutor, Rahmut Allee and witnesses No. 1, Rahmut Allee (2nd) No. 2, Lushkur Allee, No. 3, Abdool Allee, No. 4, Ohmed Allee, left Akyab in a boat for the interior to purchase rice on the 4th March last, taking with them 380 rupees. At night, they halted at a place, by name "Hunkra" and were joined the following morning by the prisoners, who were in a small boat.

1854.

August 21.

Case of ONGEOOREE and another.

A conversation ensued, and the prisoners said they had some rice stored for sale, which they offered to sell at the rate of 40 rupees the one hundred baskets. A bargain was struck, and the parties proceeded up the river to the place where the rice was, to take possession of it, the prisoners, at the suggestion of the prosecutor, going along with him in his boat, having tied their own behind. At night fall, they anchored and all lay down to sleep in prosecutor's boat. About 9 P. M., the prisoners appear to have gone quietly into their own boat, where they divested themselves of some of their clothing, and returning to the prosecutor's boat, made a sudden attack on his party, severely wounding with their *dhaos*, No. 1, witness Rahmut Allee, and No. 4, witness Ohmed Allee, and No. 3, witness Abdool Allee, slightly. The life of No. 1, witness Rahmut Allee, was for some time in great danger. The prisoners then plundered the boat of the 380 rupees, belonging to the prosecutor, which was tied up in a bag and placed near No. 1, witness Rahmut Allee's sleeping-place, and then jumped into the water. According to the statement of No. 1, prisoner Ongeooree, the bag of money as also his *dhao* fell into the water whilst he was making his way to the shore. The prosecutor and No. 3, witness Abdool Allee, and No. 4, witness Ohmed Allee, who had thrown themselves into the river, took refuge in the prisoners' boat, whence they regained their own, and the next morning gave information of what had occurred to No. 11, witness Raipo Rowagoung, who accompanied them to Akyab, taking with them the prisoners' boat, containing a couple of baskets, three *dhotees* one "*parboot*" (memorandum book), one pair of *tweezers*, a silk handkerchief and a small box, which the prisoner admitted in their confession made in the mofussil, to be theirs. The 2nd principal assistant, Mr. Law, proceeded into the mofussil himself, to investigate the case. The prisoners at first denied to him having committed the dacoity, alleging that a dacoity had been committed on them by some Bengalees, but the following day, they made a full confession to the darogah, who had been deputed by Mr. Law to make an investigation on the spot, where the dacoity had occurred, and this confession, they corroborated before the 2nd principal assistant on their arrival at the *sudder* station, four days afterwards. Before this court, they deny their guilt, alleging that their mofussil confession was extorted from them by ill treatment, and repudiated the confession made before the 2nd principal assistant. Their confessions, in the mofussil and before the 2nd principal assistant, are proved by the witnesses, No. 7, Futteh Allee, darogah, No. 8, Maphothoo Kesuk, No. 9, Mahomed Nuckee, and No. 10, Ohmed Allee, to have been freely and voluntarily made.

I consider the guilt of the prisoners fully proved, and looking to the dangerous nature of the wounds inflicted upon No.

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witness Rahmut Allee, would sentence them to imprisonment and transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The evidence for the prosecution sufficiently establishes the guilt of the prisoners. The confessions made by them first to the darogah, and subsequently before the 2nd principal assistant commissioner, are duly attested and correspond in all essential particulars with the statements of the prosecutor and the two witnesses. As the law stands the prisoners should not have been charged with dacoity, as it has been ruled by the decisions of this Court, that not less than three men are necessary to constitute a gang, and to bring the crime within the scope of section 3, Regulation LIII. of 1803. This charge however does not bar a conviction of the crime proved against the prisoners, namely, robbery attended with wounding endangering life, provided for in section 8, Regulation XVII. of 1817. Of that crime, we convict them, and as the evidence of the medical officer shews that Rahmut Allee, witness No. 1, barely escaped with his life, we see no grounds for any mitigation of punishment, and therefore sentence the prisoners, as proposed by the officiating commissioner, to transportation for life.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND KALOO SIRDAR, BEARER ON BEHALF OF HIS EMPLOYER, A. DICK, ESQ.,

versus

HALALL KHOOREE, BEARER.

24-Pergunnahs.

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Case of HALALL KHOOREE, BEARER.

CRIME CHARGED.—1st count, theft of property in Bank of Bengal Notes, &c., to the amount of Rs. 3,286-9-0, belonging to the prosecutor's employer, A. Dick, Esq.; 2nd count, receiving the above property, knowing it to have been stolen.

CRIME ESTABLISHED.—Being an accomplice in a theft of property in Bank of Bengal Notes, &c., to the amount of Rs. 3,286-9-0.

Prisoner convicted as an accomplice in theft, sentenced to four years' imprisonment, by the sessions judge. Appeal rejected.

Committing Officer.—Mr. J. M. Lowis, assistant exercising powers of joint-magistrate of 24-pergunnahs.

Tried before Mr J. H. Patton, officiating additional sessions judge, on the 8th June, 1854.

Remarks by the officiating additional sessions judge.—This is a case of domestic theft, so common to this country, and so utterly beyond the reach of the police. The prisoner was in the

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employ of Mr. Abercrombie Dick, of the civil service, and had been discharged a few days before the robbery. On the night in question, Mr. Dick left home about 10 P. M. on a party of pleasure and returned at 2 A. M. On reaching home, he missed a box, which usually stood on a chair near his bed and found the room otherwise in disorder. He interrogated his sirdar bearer on the subject, who could afford him no information. The following morning, the prisoner was arrested on suspicion cast on him by the other servants. At first he repudiated the charge, but after a little coaxing and threatening admitted that he was cognizant of the robbery, and promised to give up the property. He first caused the cooking shed of the house-bearers to be searched, where the missing box was found broken and empty, and then pointed out a spot near the durwan's dwelling, where buried under ground were discovered the Bank Notes and other valuables, contained in the box at the time of the theft. The prisoner confessed both before the police, and the magistrate, and his complicity in the robbery is established beyond all doubt.

Sentence passed by the lower court.—To be imprisoned with labor and irons for four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner confessed in the foujdary and has urged nothing material in his appeal. We see no reason to interfere with the conviction and sentence passed upon the prisoner and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

Hooghly.

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Case of ZOREEB SHEIKH.

Prisoner convicted on his own confession of having belonged to a gang of dacoits, sentenced to transportation for life.

GOVERNMENT,

versus

ZOREEB SHEIKH.

CRIME CHARGED.—With having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 22nd of July, 1854.

Remarks by the sessions judge.—The prisoner was committed for trial by the deputy magistrate, acting under the orders of the commissioner for the suppression of dacoity, upon a charge of having belonged to a gang of dacoits.

The prisoner, Zoreeb Sheikh, No. 2, was named in the original confession of the approver, Loylab, witness No. 1, as h[illegible]-

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ing been frequently associated with him in the commission of dacoity. He confessed before the committing officer, that he had been engaged in dacoities for the past ten years, having commenced the profession in the gang of Haroo sirdar and Beeroo sirdar, and he specified eight cases of dacoity, in which he had taken part.

He pleaded *not guilty* upon the trial, and retracted his confession, which he said he had made when under the influence of *gunjah*. The falsity of this statement is apparent from the confession, which is given with a clearness and precision most unlike the deposition of a person stupified by drugs, the testimony of the witnesses, Nos. 2 and 3, proves it to have been made voluntarily, and without restraint or compulsion of any description, and the facts of the several dacoities adverted to, are corroborated by the original records of the cases, and in one of these, a dacoity committed at the house of Gooroo Churn in the village of Kachraparrah thannah, Sooksaugor, on the 16th October, 1847, the prisoner is particularly named.

The approver mentions five cases, in which he was associated with the prisoner, these are, with a single exception, viz., a dacoity committed six or seven years ago at Burah Sursah, different from those to which the prisoner has himself confessed, and a discrepancy in the name of this village, which appears between the approver's present deposition and his original confession, renders his statement as regards this particular dacoity, doubtful. Minor discrepancies are observable in this witness's different statements regarding two other dacoities, committed at the house of Chunder Churn Roy, and Surroop Mundle, and the period assigned by him to the latter case appears from the *nuthee* to be more recent than the actual date of occurrence, which I find to be the 8th December, 1845, while the witness mentions that it was committed six or six and a half years ago.

These different statements concerning occurrences of old dates, are no greater, than are always observable in the evidence of better educated persons than this informer, given at long intervals, regarding the same matter, and they are not, in my opinion, sufficient to lessen or invalidate his testimony upon the general charge against the prisoner, which I consider to be fully substantiated by this evidence, by his own voluntary confession before the deputy magistrate, and by the original records of the several cases of dacoity, adverted to in the proceedings.

I convict the prisoner, Zoreeb Sheikh, of the charge of "having belonged to a gang of dacoits," and I have the honor to recommend that a sentence of transportation for life be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) There is confirmatory proof of the occurrence of the dacoities, to his own participation in which the

1854. prisoner confessed before the deputy magistrate. Considering that confession sufficient for his conviction, on the charge preferred against him, we sentence the prisoner to transportation beyond sea for life.

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Case of ZOREEB SHEIKH.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND JUGODISRAM DEB,

versus

GOURCHURN DEB.

Sylhet.

1854.

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Case of GOURCHURN DEB.

Prisoner convicted of culpable homicide, sentenced to seven years' imprisonment.

CRIME CHARGED.—Wilful murder of Jonackram Deb.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 31st July, 1851.

Remarks by the sessions judge.—The prisoner was formerly confined in the insane hospital, and on his release, some ten years ago, was taken charge of by Juggernath Deb, the Nazir of the collector. From that time to the date of the occurrence, the Nazir has fed, and taken care of him and considered him a harmless being. Being seen, however, by the bearers of the house, on the 23rd of July, to be defiling the ground on front of the *verandah* where he lived, they abused him and threw bits of brick at him, which so enraged him, that he seized a heavy stick, and pursued them, but not being able to overtake them, he fell upon the deceased, who was sitting in the *verandah* of the Nazir's house, who is not proved to have done anything to excite his anger, and fractured his skull. He struck the deceased, a boy of ten years of age, three several blows and his death ensued in consequence in about two hours' time. The prisoner confessed in all courts to the beating the boy and urged in extenuation that he had pelted him, but of this there is no evidence. The depositions of the Nazir and his servants and of the civil surgeon prove the prisoner to be of weak understanding, but capable of distinguishing right from wrong, and from questioning him, I came to the same conclusion.

The jury convict the prisoner of culpable homicide only, but the crime is clearly one of murder, and I would therefore recommend that the prisoner be imprisoned for life in irons in transportation beyond seas.

Having recommended transportation under the rules of the *Sudder* Court, I may be allowed to express my hope that the prisoner may be imprisoned in the zillah jail only, and be

subjected to such light labor as is suitable to one in his condition. 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Although it seems quite true, as remarked by the sessions judge, that the deceased had not joined those who abused and pelted the prisoner, yet it appears to us equally clear from the prisoner's confessions that he believed him to be one of those who had so treated him, and under this impression vented his rage in the manner described by the sessions judge. August 21. Case of GOURCHURN DEB.

Giving the prisoner therefore the benefit of this presumption in his favor, which relieves him from the guilt of having beaten the deceased without provocation and merely for the sake of venting his rage on the first object that came in his way, we consider from the absence of all previous malice, and his natural weakness of intellect rendering him less capable to reflect on the consequences of his acts, that the crime may justly be regarded as culpable homicide only, and of that we convict him, and sentence him to seven years' imprisonment with labor suited to his condition.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND PRANKISTO SURMA,

versus

RAMRUTTON SOOTRODHUR. Mymensingh.

1854. August 22. Case of RAMRUTTON SOOTRODHUR.

Prisoner convicted of knowingly receiving stolen property, sentenced to two years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, burglariously entering the house of the prosecutor and stealing therefrom 190 Rs. cash, and property consisting of gold and silver ornaments, cloth, brass, and iron utensils, &c. valued at Rs. 138-11-0; 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Knowingly receiving stolen property.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh on the 24th June, 1854.

Remarks by the sessions judge.—The burglary having been reported to the police, the mohurir proceeded to the spot and made some inquiries on the subject, but the magistrate not being satisfied with the proceedings directed the darogah to investigate the matter, which resulted in his apprehending this prisoner (and No. 4 of the acquittal statement) upon suspicion, and he gave up property Nos. 1 to 5, being two *lotahs*, a *dhotee*, a gold

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Case of RAMRUTTON SOOTRODHUR.

nuth, and a *jhapee* or ratan basket, saying that he did not himself commit the theft at the prosecutor's, but that as No. 4 and others who committed it were going away with the spoil, he met them and they gave him these articles. In the foujdary he repeated his confession of having knowingly received stolen property. In this court, however, he denied the charge and urged enmity with the prosecutor; but the property given up by him, having been fully recognized by the prosecutor and his witnesses, I concurred with the law officer in convicting him on the 2nd count of knowingly receiving stolen property. There was no proof beyond the prosecutor's own assertion of so much property having been stolen, and I consider the magistrate might himself have dealt with the case.

Sentence passed by the lower court.—Imprisonment with labor and irons for the period of two (2) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner confessed before the police and to the magistrate, to the possession of part of the stolen property which he gave up. He now pleads that he was drugged at the time by the police. We see no reason to interfere with the conviction and sentence, and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

Rajshahye.

PURTEEMA AURUT.

1854.

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Case of PURTEEMA AURUT.

Prisoner charged with perjury acquitted, see case of Moyna Aurut.

CRIME CHARGED.—Perjury in having on the 5th June, 1854, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the joint-magistrate stationed at Serajgunge, that she saw Pear Sheikh striking his wife Munda Aurut who died from the effects of the blow so administered. And in having on the 14th July, 1854, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Rajshahye, that the abovementioned statements made by her before the joint-magistrate of Serajgunge, were not true; and that she had been told to make such statements by other persons, and that Munda Aurut had committed suicide by hanging. Such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna, Rajshahye.

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Case of PURTEEMA AURUT.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 24th July, 1854.

Remarks by the sessions judge.—This is another witness in the case of Pear Sheikh, charged with the murder of his wife.

The case was tried with the same jury. The prisoner pleaded *not guilty*, admitted both her conflicting depositions made in the foujdary and sessions court, and when called upon for her defence, pleaded, that she had been threatened by the police with *merige*, and her clothes pulled off her, or properly speaking her *only* cloth, a *saree*.

Four witnesses deposed to the threat held out to the prisoner, but did not see her clothes touched.

The jury being charged to consider their verdict, brought in a similar one to that in Moyna Aurut's case. I concur in the finding, and also strongly suspect her testimony before the joint-magistrate of Serajgunge was given from fear, or under the threat held out to her by the police, and that she has, *at last*, told the truth.

This prisoner, however, is by no means a young woman and had a young child with her. I beg therefore to recommend in her case, that the sentence of three years' imprisonment with labor, suitable to her sex recorded, be mitigated, or reduced to half, viz. eighteen months' imprisonment, to commence from the date the trial was concluded.

The darogah of Shahzadpore was in attendance but not in court, and after the trials gave in a petition which I have appended to the proceedings. He asserts the evidence for the defence in both cases is all false and got up by the zemindars of Salope, no doubt troublesome and turbulent men, but I do not see how they could have had time to interfere in the matter, or tamper with the witnesses. I have, however, no objection to add, that merely a threat may have been held out, and nothing in the shape of maltreatment or torture resorted to. But a *mere threat* held out to ignorant native women, often tends to their perjuring themselves, without considering how easy it would have been for them to explain to the magistrate, why they had given the evidence, recorded *as theirs*, in the thannah or police reports.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) This case is in its circumstances precisely similar to that of Government versus Moyna Aurut disposed of this day, and the prisoner for the reasons therein given, should be also discharged.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

KALLACHAND GAZEE (No. 1,) MUNNOO GAZEE (No. 2,) MUNGLYE GAZEE (No. 3,) GOPAL GAZEE (No. 4,) AND NUNKO GAZEE (No. 5.)

24-Pergunnahs.

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Case of KALLACHAND GAZEE and others.

Prisoners convicted of being illegally assembled with intent to commit dacoity, sentenced by the sessions judge to various terms of imprisonment. Appeal rejected.

CRIME CHARGED.—Being illegally assembled with intent to commit dacoity, on the night of the 23rd February, 1854, corresponding with 13th Falgoon 1260, B. S.

CRIME ESTABLISHED.—Being illegally assembled with intent to commit dacoity.

Committing Officer.—Mr. A. Hope, joint-magistrate of Baraset.

Tried before Mr. J. S. Torrens, sessions judge of the 24-pergunnahs, on the 16th May, 1854.

Remarks by the sessions judge.—The prisoners are committed for having assembled to commit dacoity in the house of Tarnee Bhuttacharge, witness No. 6. They all plead *not guilty*, as they also did before the police and the magistrate. Tarnee Bhuttacharge is a resident of Jeegree in the thannah of Cuddumgatchee, zillah Baraset. The prisoners Nos. 1, 2 and 3, had been lately released, after expiration of their terms of imprisonment, from Baraset jail, and it appears whilst there, they heard from one Imamdee, a resident of Jeegree, who was in prison with them, that a dacoity in the house of the abovementioned Tarnee, would be a profitable undertaking. They accordingly repaired on the morning of their arrest to Pancho Karrighur, who was nephew of Imamdee, residing in his house, having introduced themselves as sent by him. The dacoity was planned by them in concert to take place that night. Pancho however, before the time came, gave information to Tarnee Bhuttacharge, and it was arranged that when the dacoits assembled, notice should be given. In the night, the prisoners having returned to Pancho, according to agreement, he placed them in a neighbouring garden, and gave information to Tarnee, by whom the chowkeedars and some respectable people of the village had been collected. In this way they were seized with bamboos and implements ready for the dacoity. The case was tried before the sessions with the aid of assessors, who find the prisoners guilty. In this verdict, I agree. The first impression which the narrative conveys is, that the case was got up, but the examination of the witness, Pancho No. 1, and of Tarnee Bhuttacharge, as well as of the witnesses, Nos. 7 to 11, corroborate the representation

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of Tarnee Bhuttacharge and Pancho. The conduct of the latter is, I think, to be accounted for, that he had at first the intention of joining in the dacoity and then, either from fear or other cause, gave information to Tarnee, whose ryot he is. The defence of the prisoners that they were returning from a fair, then going on at a neighbouring village, and that a quarrel arose when passing through Jeegree is quite unsupported by the evidence. I sentence the prisoners Nos. 1, 2 and 3, to ten years' each with labor and irons, and the prisoners Nos. 4 and 5, as it is their first offence, and they appear to have been led into the crime by the others, to four years each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The evidence is clear and consistent as to the prisoners having been taken in the night time, with *mussals*, chisels, and other articles, used by dacoits, in the commission of dacoity. This is of itself sufficient to warrant the inference that they had met together with intent to commit dacoity, and the evidence of the informer to this extent, may be received without question, as the other witnesses admit that the capture was made on his information.

We see no reason to interfere with the sentence, and reject the appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

PASHA BEWA AND GOVERNMENT,

versus

MEHERALLY MEER.

Rajshahye.

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Case of MEHERALLY MEER.

CRIME CHARGED.—Wilful murder of Monah Aurut.

Committing Officer.—Mr. S. F. Davis, joint-magistrate of Serajgunge.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 22nd July, 1854.

Prisoner convicted of the wilful murder of a woman with whom he had carried on an intrigue which he wished to stop, sentenced capitally.

Remarks by the sessions judge.—The trial was held with the assistance of a jury, consisting of three respectable *wakeels* of the *sudder* ameen's court at Pubna, who acquitted the prisoner, but I reluctantly dissent from the verdict, as the crime charged is proved against the prisoner by his *own* confessions in a manner.

The circumstances are very different from the case referred yesterday. In that case, the motive for the outrage ending in death was evidently jealousy, and of the favors of a common prostitute.

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In this, the prisoner who had a *liason* with a woman (separated from her husband on account of his insanity) wanted to break of the connexion and had previously threatened the woman, that if she persisted in continuing the intimacy, he would kill her, which threat I consider he carried into execution.

There is only one eye-witness; a boy of twelve years of age, and a servant of the prisoner's.

This witness, Momina Sheikh, deposed that he was sleeping in the *gowail*, or cow-house. That about 9 o'clock, having occasion to go out, he saw the prisoner disputing with the deceased, when the former seized deceased by the throat, and compressed it till she was dead. The prisoner then came and took a rope from the house he was sleeping in, and having got on the top of a *polo* (a basket used for catching fish) hung up the deceased's body to a jack-tree; the deceased told the prisoner, he must marry her, but he refused to do so; the deceased was strangled on the ground, she made no noise, and the only thing he saw her do, was to kick up her feet when lying on the ground, and which he expressed by the words *kamee-jamee*.

In the moffussil (after admitting the illicit intercourse he had with the deceased) the prisoner confessed, that he called the deceased from her own house to his and having held a long conversation with her under a jack-tree, he at last threatened to kill her if she did not leave him alone, and then (to alarm her) he laid hold of her throat, and began to squeeze it, but she apparently did not seem to care for this. He then got a *polo* (or basket used for catching fish) and the rope of a harrow, and fastening the rope round the woman's neck (who stood of her own accord without saying anything), he got on the *polo* and tied the rope to a branch of the jack-tree. The deceased then placing her hands on his shoulders, raised herself, while he fastened the rope. He then removed her hands (from his shoulders) and she was left hanging. He sat down a short distance off, and saw her make three convulsive struggles. This caused him to feel faint, but receiving a blow on his foot, from his stumbling, he recovered (his senses) and ran towards her, but found she was dead. At cock-crow, not knowing what to do, he called Burkut Mundle and Assalut to consult them, but who perceiving that the woman was dead, went away without saying anything. He therefore cut down the body and carried and threw it down near her house.

Before the joint-magistrate, after detailing at some length the circumstances of the connexion he had with the deceased, and which the members of his family very much disapproved of, the prisoner repeated the confession he had made in the mofussil, *except* what related to the preliminary squeeze he gave the deceased before he hung her to the tree, and from his own account he pulled her up half a *cubit* from the ground, when she

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gave three sighs, and he fastened the rope. He also repeated that he had called in Burkut Mundle to consult him, but he gave him no advice. After this he cut down the body, and carried and threw it down outside of the deceased's house.

To questions put by the joint-magistrate, he replied, the confession was a voluntary one, and that the police had used no threats to get him to confess, and that he had no witnesses.

The attesting witnesses to the above confessions fully proved them to have been made voluntarily by the prisoner,—the first in the presence of the darogah of Serajgunge, and the second before the joint-magistrate of that sub-division.

The witnesses, Burkut and Assalut, both deposed, that they saw the body of the deceased hanging from the jack-tree, and the prisoner told the former he had hung her there.

Other witnesses proved the finding of the body near the house of the prosecutrix, mother of the deceased.

The attesting witnesses to the *sooruthal lash*, or inquest on the body, deposed that there was a black mark round the neck of the corpse, and a little blood had run from the nose.

As on the night of the occurrence it was full moon, there could be no difficulty in seeing what took place so near the cow-house, or under the jack-tree by a person in the former place.

I never saw a woman strangled or hung, and never wish to see. But I saw a woman perform *suttee*, and when the smoke from the burning grass and wood of the pile arose, the woman, who had till then been fanning the corpse, or driving off the flies, laid down by the side of her husband's body, and in a few seconds began to kick up and down her feet, caused no doubt by the suffocation from the smoke, and then all was still.

The boy's account of the deceased's movements are to the same effect, and appear to me a truthful account of what he saw and what really occurred.

The prisoner's defence was, that the villagers were at enmity with him, and that Punchoo Sircar, after he was arrested, took away the lad and taught him what to say. He only examined one witness, but who knew nothing of his being beat at Punchoo's house.

The jury in their verdict state that the boy's evidence does not agree with the prisoner's confessions; they, therefore, reject both and acquit him of the murder of the deceased.

If the confessions were a denial of having *any hand* in the death of the deceased, this verdict might be a true finding, on the evidence, but it is clear from both, that he was assisting the woman to commit suicide by hanging, he performing all the active part of an executioner.

However, I do not credit the confessions, nor do I consider they are entirely to be relied on, I give greater credence to the boy's account of the transaction, seen from a house close adjoin-

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ing and by the light of a *full moon*, and the presumption afforded by his evidence, and the circumstances of the case are, that the prisoner first of all strangled the deceased, and *then* hung her body up to the jack-tree. That she was a consenting party to her own death, I do not believe. By being hung she could not gain *her end*, while the prisoner, by killing her got rid of her importunities to marry her, and to effect this, he called her to his house, and, after a long conversation, carried his threat into execution.

When there is a verdict of acquittal, no capital sentence, I presume, could be adjudged, but I think in this case the verdict, as opposed to the evidence, should be set aside, and the prisoner sentenced to imprisonment for life in transportation for the wilful murder of Monah Aurut, the daughter of Pasha Bewah, and with this opinion I leave the case in the hands of the Court.

In the way from Serajgunge, the boat in which the record of the proceedings held by the joint-magistrate was being sent, was wrecked, and all the papers soaked with water. This will account for the damaged appearance of the foujdary record. A part too of the darogah's final report, dated the 14th March, while the papers were opened out to be dried at Pubna, has been lost, but all the essential papers are uninjured.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Without adverting to the boy Momina Sheikh's evidence, which has varied considerably at different times regarding the manner of the murder, and cannot therefore be trusted to, we are of opinion that the prisoner's own confessions make out a clear case against him, and are sufficient to convict him of the crime charged. It is not necessary for this end, that we should ascertain by what precise acts the prisoner effected his purpose, or whether life was actually extinct previous to, or after, suspension; he admits that he threatened to take the woman's life unless she complied with his wishes to give up their intimacy, this she refused to do, and he then deliberately proceeded to those violent measures which without doubt terminated her life. The murder was cold-blooded and malicious, and the case in our opinion presents no features entitling the prisoner to the merciful consideration of the Court. We do not think the reason stated by the sessions judge is of sufficient force to bar capital punishment, and adjudge the prisoner to suffer death.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MOYNA AURUT.

Rajshahye.

1854.

August 22.

Case of MOYNA AURUT.

Prisoner charged with perjury acquitted, the Court finding that her statement to the Police was made under fear of ill-treatment.

CRIME CHARGED.—Perjury, in having on the 5th June, 1854, intentionally, and deliberately deposed, under a solemn declaration taken instead of an oath before the joint-magistrate, stationed at Serajgunge, that she saw Pear Sheikh striking his wife Munda Aurut, who died from the effects of the blows so administered. And in having, on the 14th July, 1854, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Rajshahye, that the above mentioned statements made by her before the joint-magistrate of Serajgunge were not true, and that she had been told to make such statements by other persons, and that Munda Aurut had committed suicide by hanging: such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 24th July, 1854.

Remarks by the sessions judge.—The case was tried with a jury, two of whom had sat as jurors on the first trial, from which the assignment of perjury, as set forth in the charge, arose, and which ended in the acquittal of the prisoner charged with the murder of his wife, and it was on account of the prisoner, as a witness repudiating her statement before the joint-magistrate of Serajgunge, that the joint-magistrate of Pubna was directed to commit her for perjury, and to summon any witness she might have to offer in support of any plea she had to make.

The prisoner pleaded *not guilty*. On hearing the two conflicting depositions made by her, she admitted both.

A mohurir of the foujdary court deposed to taking her deposition before the joint-magistrate of Serajgunge, and that she repeated the solemn declaration instead of an oath, before she gave her deposition. A peadah proved that she repeated after him the solemn declaration in the sessions court.

The prisoner, when called upon for her defence, pleaded that she was maltreated by the police and tutored to give the deposition she did give before the joint-magistrate of Serajgunge. No less than five witnesses for the defence deposed to her being threatened

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with *kudoo* and *mirige*. (It is not necessary for me to explain to the Court what was meant by these vegetable productions.)

The jury were then charged to consider their verdict. *First*, if the prisoner had made the contradictory statements, and *second*, if she was induced to make the one before the joint-magistrate by threats held out to her by the police.

They then gave in the special verdict recorded, finding her guilty of the charge as set forth, and adding that she had been threatened by the police.

They also verbally stated that, in their opinion, the deceased or the wife of Pear Sheikh, had hung herself, as according to the witnesses to the *sooruthall lash*, there were no marks on the body; except round the neck.

I concur in the finding, I also think the charge of murder could not have been sustained against Pear Sheikh, had the witness (who is his sister) adhered to her former statement, and considering that she has, by telling the truth, *at last*, saved her brother from an ignominious sentence, and the court from convicting him on false testimony, I would beg to recommend her case for a mitigation or remission of punishment. A sentence of three years' imprisonment with labor suitable to her sex having been recorded, but no warrant issued.

She cannot be much above fifteen years of age, though married.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) As the sole motive of the prisoner in making the false statement referred to, was to escape the torture and ill-treatment threatened by the police, we consider she does not merit the punishment of wilful perjury, and direct her immediate discharge.

PRESENT:

Nuddea.

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

1854.

August 23.

Case of SREERAM DOSS KYBERT.

GOVERNMENT,

versus

SREERAM DOSS KYBERT.

Prisoner convicted of wilful murder, sentenced capitally.

CRIME CHARGED.—Wilful murder of Shorishah Bewah.

Committing Officer.—Mr. G. Hewitt, deputy magistrate with full magisterial powers at Cutwa, Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 7th August, 1854.

Remarks by the sessions judge.—Late on the night of the 17th Assar, 30th June, the deceased Shorishah, a widow, had

her throat cut. Seetanath and Pheloo, a woman with whom he cohabits, live in a house on Shorishah's premises. They were awoke by Shorishah's cries, about 4 in the morning: going out they saw Sreeram, the prisoner, running off, and Shorishah lying, or just as she fell, in her *verandah* with her throat cut. Shorishah had slept inside of the house, and the wooden bedstead and bedding on which she lay were marked with blood. Not only do the witnesses Seetanath and Pheloo say that they saw the prisoner, but that the deceased declared in their hearing that Sreeram had attacked her and that she had snatched from him the razor with which he cut her throat. The razor she gave to the woman Pheloo.

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On the discovery of the murder, Seetanath called to the chowkeedar Gudadhur, who immediately came up. He found Shorishah lying in her *verandah*, and in answer to his enquiry she said Sreeram had wounded her and that she had taken from him a razor. This razor he saw in Pheloo's hand.

The conduct of the chowkeedar appears to have been commendable; he roused the neighbours and without delay went to the village gomashtah, Esur Chunder Banerjea, to whom he told what Shorishah had just mentioned to him, that Sreeram had wounded her. It was about day-break when the chowkeedar got to the gomashtah's house.

The neighbours, who first came to see Shorishah, were the witnesses Ramessur, Jugbundoo, Jadub Dutt, Bishonath and Deenoo Kybert. When they came, Shorishah had lost the power of speech. She died about dawn. The gomashtah, Esur Chunder, arrived shortly afterwards.

Deenoo Kybert is a brother of the prisoner. He states that the prisoner ate and slept at home: that he himself slept inside of the house, prisoner in the *verândah* (*peera*) and that when he was roused by the cries of Seetanath, he saw the prisoner's bedding but not himself; and that the prisoner no more returned. Prisoner gave his age as sixteen or seventeen, Deenoo says his own age is twenty-three, prisoner's twenty-one years, and so would one judge from his appearance. It should be observed that Deenoo's statement to the deputy magistrate with regard to the prisoner was less explicit. It will be seen that at first he said he had not seen Sreeram later than noon on the day before; but that afterwards he said, Sreeram took his dinner at home at night, but he could not say whether he slept in the *peera* or elsewhere. In both courts he admits that for some years there had been differences between himself and brother.

The prisoner Sreeram adduced no witnesses, and when first called upon said he had no defence to make. He said, when the charge was got up against him his brother drove him off. To the deputy magistrate, prisoner said he ate and slept at home in the *peera;* that he was roused by Seetanath's cries of murder, that

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he went and saw both him and Pheloo; that Seetanath charged him with the murder, and told every body he had done it and that he fled, and so on. He made a similar statement to the darogah.

The jurors considered the evidence to be insufficient for the conviction of the prisoner, but I was unable to agree in their verdict. It is doubtful whether the witnesses Seetanath and Pheloo actually saw and knew the prisoner, when they were disturbed by the cries of Shorishah. They say it was by a flash of lightning they identified him. They appear not to have intimated their identification of the prisoner to their neighbours when they first came. The witness Jugbundoo expressly says Seetanath declined to say who committed the murder till morning, lest the party named by him should abscond. But the evidence of the chowkeedar Gudadhur, seems unexceptionable; undoubtedly Seetanath and Pheloo also heard Shorishah charged Sreeram with the crime, and possibly they took her information as a clue to their own recognition of the fleeing criminal. Shorishah seems to have been perfectly conscious at the period the wound was inflicted. She was struck inside as she slept, she had strength to cry aloud, to get up and to follow the criminal to the *peera* of her house; and she snatched the razor from him and also it appears his *chadur* which she held round her neck and with which she endeavoured to staunch her gushing blood. Circumstances also seem to affirm the prisoner's guilt, as his own flight, and the statement made by his brother.

No potent cause is assignable for the murder. Possibly the prisoner thought to possess himself of the ornaments which the deceased wore. This seems to have occurred to Shorishah herself according to the witness Pheloo, Shorishah said if Sreeram had murdered her and taken her ornaments, the blame would have fallen on them (Seetanath and Pheloo).

I am unable to assign any reason why the prisoner Sreeram should not be sentenced to death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) There is every reason to believe that Shorishah, though mortally wounded, was able to reach the *verandah* of her house and to call for assistance. Under such circumstances it is quite possible she could recognize her assailant, and of course named him to those who came to her aid before she died.

Robbery was, in all probability, the object of the attack, as she had several ornaments on her person and as none of them were missing, no doubt the struggle and escape of the woman obliged her assailant to fly without accomplishing his purpose.

The immediate flight of the prisoner from the village and his concealment, which he admits, raise a presumption that he was well aware, the woman at least had recognized and would,

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if able, accuse him of the deed, and the cut on his finger, to which the sessions judge does not allude, and which the prisoner says was inflicted by Seetanath to direct suspicion towards him, supports the belief that he was the man who committed the murder. The story he told when first apprehended, of his immediately going to the house, on hearing the outcries of Seetanath and Pheloo, and what then occurred, and the way in which he accounted for his cut finger are far too improbable for belief, and his statement altogether appears to have been made up to meet those facts, which he knew were most likely to tell against him. It is also in evidence, that the *chudder*, used by the deceased to staunch the wound in her throat, belonged to the prisoner, and he signally failed to account for the absence of his own, the probability, therefore, remains that the *chudder* was his, and was left behind him, when he fled from the house on the night of the murder.

The prisoner's attempt to shift the crime on the chief witnesses against him, seems to be without the slightest foundation. Had these persons plotted to murder the woman, it must have been for the sake of her ornaments; it follows that they would not have called the chowkeedar or raised an outcry, until all was over, and the property secured and disposed of; the property however was untouched, and the chowkeedar certainly came in time to see the woman before the power of speech had left her; the acts of these persons therefore leave them open to no reproach or suspicion. In fact, the circumstantial evidence in every way points to the prisoner as the real culprit, and in no way indicates the probability, that any other person was concerned in the murder.

The proof of the prisoner's guilt appears to us clear and unmistakeable; and seeing no circumstance to warrant a mitigated sentence, we condemn him to suffer death.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MOHEEM SIRDAR (No. 19,) TENGUR SIRDAR (No. 20,) KITA FUKEER (No. 21,) BUDDUN KAREEGUR (No. 22.)

Rajshahye.

1854.

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Case of MOHEEM SIRDAR and others.

Prisoners charged with wilful murder, acquitted, owing to the unsatisfactory nature of the evidence for the prosecution.

CRIME CHARGED.—1st count, wilful murder of Rai Munnee Peshagur; 2nd count, being accessaries to the above murder.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 14th July, 1854.

Remarks by the sessions judge.—The prisoners were charged with wilful murder, and the law officer only finds the offence to be culpable homicide; agreeing with him that there was nothing premeditated, still as the abduction of the deceased, from her house, was attended with violence, and she very shortly afterwards died from a blow given on some fatal part of her body, and which has not since been discovered, I consider three of the prisoners, who were concerned in her death, to be deserving of a more severe punishment than I can award, and therefore refer the case for the Court's orders.

The deceased was a prostitute in the village of Sellimpore and resided close to the *bazar*, the usual location of this class of females. On the night of the 6th of April, she had been visited by a paramour (witness No 1), and while he was sleeping in the house, it was attacked by four persons, who forcing an entry, seized and carried off the deceased. No. 19 first laying hold of her, that he (witness) effected his escape by a casement, and followed the prisoners, when after going a short distance towards the village of Owtiparah (which adjoined Sellimpore *bazar*) an altercation took place, between the prisoner, No. 19, and the deceased; the former then struck her on the face and she fell, and another gave her some kicks; a remark was then made that she was killed, and one of the party went to fetch water. The witness had frequented deceased's house for about a month, and distinctly recognized and pointed out Nos. 19 and 20.

The next witness (No. 2) a female, had occasion to go out at night, and saw the prisoner, No. 19, and the deceased quarrelling, and on the latter abusing him, he struck and felled her to the ground; he then told No. 21 to go and fetch some water. the witness then went away; she pointed out the three first prisoners, of these Nos. 19 and 21, she knew, as they lived at Owtiparah.

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Witness, No. 3, was with her mother, sleeping at home, and hearing some one taking water from a *kulsee* they had outside, both got up to see who it was. This witness looked over the *tatee* or fence, and saw three persons hanging over a fourth, who was lying on the ground, and the three standing she recognized as Nos. 19, 20 and 21, and the last named, she stated, took the water. It was about, by this time, moonlight, and therefore all the witnesses might, by the light of the moon, have seen, what they describe, with ease; and both the female witnesses are respectable, and the mohurrir of Arunkollah, who was sent for, and examined both to the confession of No. 20, and to the statements made by the witnesses, Nos. 2 and 5, before him in the mofussil, deposed, that they both pointed out the *same* place or spot (where they had seen the deceased lying) and the prisoners standing near her, and that there was nothing between, or which could impede their seeing the deceased lying on the ground.

No. 20 confessed in the mofussil. His confession is to the effect, that he accompanied others (who he names); that he was present when the deceased was carried off from her house towards Owtiparrah, and then saw her struck down and kicked till she became senseless; on this, he called out, " She is killed, bring some water." Ketta (No. 21,) then went and fetched some, but before he came back, she was dead. It was then proposed to take away her body, and after great entreaty on the part of others, he assisted to carry it to a hollow, when her ornaments were taken off, and made over to Buddun (No. 22,) who said he would dispose of them at Pubna, and they should share the proceeds.

This confession, the mohurrir deposed, was made before him, and was also attested by two very respectable witnesses, as voluntarily made by the prisoner.

No. 22, was apprehended by a zemindaree pyke, and produced a *katta bazoo*, or armlet, that had belonged to the deceased, and which was fully recognized as being her property. He all along said No. 20 had given him the armlet to sell.

He also made a confession to the same effect, adding that hearing of Rai Munnee's death, he was trying to evade, and that he knew the *katta bazoo* belonged to Rai Munnee.

In the sessions court, he admitted the first part of his confession, but denied, saying he tried to evade, or that he knew the armlet belonged to Rai Munnee.

The mohurrir again attested this confession, and of the two attesting witnesses, one (No. 9,) deposed that the prisoner did not confess that he knew the *bazoo* was Rai Munnee's.

No. 19 pleaded he was at home and this his father-in-law and brother confirmed.

Nos. 20 and 21 had no defence, and declined examining their witnesses in attendance.

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No. 22, besides repeating that No. 20 gave him the *katta bazoo*, pleaded he was at home on the night of the occurrence. But though he examined seven witnesses, nothing explicit was elicited from their evidence.

The law officer convicts No. 19 of carrying off the deceased from her house, and beating her with his fist and feet, who died therefrom, and Nos. 20 and 21 of being accomplices in the culpable homicide, No. 20 from his confession, and No. 21 from No. 20's confession and the evidence, and adds No. 22, according to the confession of No. 20, was an accomplice, and this was proved from the finding on him, property belonging to the deceased, and his running away.

Now, though the confession of No. 20 can only be evidence against him, I think the evidence of the witnesses fully establishes the fact that Nos. 20 and 21 were present, when the deceased came by her death from blows inflicted by No. 19; and as they were concerned in her forcible abduction, they cannot be held guiltless of her death, which I too hold to be culpable homicide. No. 19 is the most guilty, I would beg to recommend, that he be sentenced to fourteen years' imprisonment, and Nos. 20 and 21 to ten years each, *all* with labor and irons.

I would give No. 22 the benefit of the doubt raised by the evidence of the two females, who both deposed they only saw *three* men, besides the woman. However his having in his possession the property of a female who had come to a violent death, *after* he was aware of such death, renders him, in my opinion, an accessary after the fact, and, I think, he should be sentenced to not more than seven years' imprisonment with labor and irons.

While the trial was going on, he evidently tried to keep aloof from the other prisoners, or to make it appear that he was not associated with them, by standing some distance from them at the bar, or rail of the court, and he may be a *little* better than they are, though his witnesses did not depose to his character being a good one.

With this opinion, I leave the prisoner's case in the hands of the Court. All are in jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) One very essential thing is wanting to establish the credibility of the eye-witnesses in our estimation; *their information was not promptly and immediately given.*

It is on record, that Pittam, the deceased's near neighbour, and the little girl who resided in deceased's house, informed the police, that the witness, Jachun, was with the missing woman on the night of her disappearance. Now the evidence of these persons was from the first available, yet no mention is made of this important fact, till four days after the woman was missed; up to that time it was supposed no clue whatever could be found

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to account for her absence. At the same time it is quite clear, that no attempt was made to baffle the efforts of the police by concealing or withholding information, nor was any wish shewn to screen or befriend the accused. What then caused the delay in examining Jachun, who was only sent for on the 11th though the police had been on the spot since the 8th of April?

Confirmation of Jachun's statement is wanting in some points, where we think confirmation should be forthcoming. He says, that the missing woman was forcibly carried off from her house by four men on the night of the 6th of April. Neither her nearest neighbour, nor the little girl sleeping in the same hut with her, knew anything of this. Can it be possible that such an outrage could be committed, and the woman unable to raise any alarm, or that the commotion itself should not have attracted the attention of one sleeping in the same room with her? Again Jachun deposes to having told Deegun when he went to her house to ask for a bed, all that had occurred to the deceased whom he supposed to be killed, all which Deegun positively denies, though she admits that he came to her house, and slept in her *verandah* on the night in question. Thus on these points, where we think Jachun's story might have support, we find none.

Rashoo's (the other eye-witness) account of the murder and assault was not disclosed till the 13th or 14th, after the prisoners, whom she recognised, were in custody. It might be supposed, that the police were only led to question her and the other woman, because the place of the assault pointed out by Jachun, and in Tengur's confession, was in the vicinity of their houses, but we cannot rely upon the fact of the assault, &c., having been committed there, or of the body having been concealed in a neighbouring hollow; as this also depends on the veracity of the witnesses only, no trace or remains of the corpse having been yet discovered, or its total disappearance from the alleged place of concealment in any way accounted for. With such a result, it would be difficult to convict the prisoners of the homicide; but seeing reason to distrust the evidence altogether, as open to the suspicion that it has been got up by the police against the prisoners, we would on this ground acquit them.

Tengur's confession in the mofussil was denied by him throughout, and cannot be relied on as genuine, and Buddun's accusation of him cannot be used against him, neither is it sufficient, in our opinion, to implicate himself, as he is not proved to have really admitted that he knew the ornament given up by him had belonged to the missing woman. We acquit all the prisoners.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND MELUN BEEBEE,
versus
RAJOO MUSSULMANY.

Hooghly.

1854.

August 21.

Case of RAJOO MUSSULMANY.

The prisoner was convicted of the wilful murder of a boy for the sake of his ornaments and sentenced, with reference to the peculiar circumstances of her case, to imprisonment for life.

CRIME CHARGED.—1st count, charged with the wilful murder of Moonshee, the infant son of the prosecutrix, Melun Beebee; 2nd count, taking from the person of the deceased, a silver chain *(gote)* valued at Co.'s Rs. 3; 3rd count, keeping the said article in her possession.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 7th August, 1854.

Remarks by the officiating additional sessions judge.—The deceased was a boy between seven and eight years old, and had gone out to play as usual about noon. After the lapse of an hour or two after his departure, his dead body was brought home by his uncle,* who found it in a pool of water. He happened to be working in his fields near the spot and heard the screams of two women,† who were saying "She has murdered the boy, Moonshee, and is making off." He ran to the place and learned from the women, that the prisoner had dragged the body from some jungle and thrown it into the water. A hue and cry was immediately raised after the prisoner, and she was caught in her father's house sitting on the cross beam, which supports the thatched roof. Her object was manifestly concealment, but she was detected by the chowkeedar,‡ who especially went in quest of her, and brought her down. She at once admitted her guilt and produced from under a heap of *rubbish* behind the house, a silver waist chain, which the deceased had on, when he left home. These several facts will be proved by the parties marginally noticed.

An inquest was held on the body by the darogah, from which it appears certain bruises and marks were apparent on the forehead and face. The record is attested in the usual manner.§

The body was in a decomposed state when it was examined

* Sheikh Hafiz, witness No. 15.

† Abdari Beebee, witness No. 16. Nussi Beebee, witness No. 17.

‡ Gungaram, witness No. 1.

§ Dulal Mullick, witness No. 2. Sheikh Khatir, witness No. 3.

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by the civil surgeon,* and he was consequently unable to pronounce decidedly on the cause of death. He was of opinion however from the appearances he observed, namely, the distorted features, the protruding tongue and eyeballs and the open mouth, together with marks of compression on the neck, and the blood-engorged state of the lungs, that strangulation was most probably the means used to destroy life.

* F. F. Dukes, witness No. 4.

It appears from the report of the darogah of Huripal, that the body was despatched by him at 9 P. M. on the 1st July. No mention is made in the record of commitment of the time it reached the *sudder* station, but as the distance, between the scene of crime and Serampore, is only seven *kos*, it ought to have arrived in time to admit of its being examined on the morning of the 2nd idem. The report of the civil surgeon shows that it was presented for dissection on the 3rd ib., in an advanced stage of decomposition. The deputy magistrate of Serampore has been called upon to explain the cause of this delay.

The prisoner confessed crime before the police and her confession will be found formally attested.† She admitted that the deceased was playing in the water, where she went to fish for cockles, and that the ornaments he wore, incited her to murder him; but that the act was quite unpremeditated; the temptation was as sudden as it was irresistible.

† Sheikh Abdul, witness No. 5.
Sheikh Panchu, witness No. 6.

In her confession before the deputy magistrate, attested as per margin,‡ she assigned another cause for the murder, and stated that the deceased pinched her while she was groping for cockles in the water and that she was so much irritated and enraged at the proceeding, that she first slapped his face and then seized him by the throat, on pressing which, he expired. She disavowed all intention of killing the boy, and ascribed her violence to a fit of ungovernable anger. On being asked, why, under such circumstances, she took off and appropriated the waist chain he wore, she attempted no explanation, but designated the act as a piece of consummate folly and madness, for which she could not account.

‡ Keshub Rai, witness No. 7.
Juddunath Koonwur, witness No. 8.

The *futwa* of the law officer convicts the prisoner, Rajoo Mussulmany, of the wilful murder of the boy, Moonshee, and declares her liable to *kissas*.

I concur in the finding; of the prisoner's guilt of the crime of murder there can be no doubt, and her consequent liability to the extreme penalty of the law; but there are two considerations in the case, which deter me from recommending a capital

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sentence. The first is, the youth of the prisoner, a girl between sixteen and seventeen years of age, with an infant at the breast, abandoned by her husband and deprived of the necessaries of life to support her child and herself, and the second is the possibility of the truth of her confession before the deputy magistrate, namely, that she unintentionally committed the act in a fit of sudden fury induced by smart pain inflicted by the deceased. And this view of the question is not without its corroborative evidence, for had robbery been the prisoner's sole object in the murder, and none other can fairly be ascribed to her, it is not probable that she would have left a silver bangle and a silver anklet on the body, when she removed the waist chain. Under these circumstances, I commend the prisoner Rajoo Mussulmany, to the mercy of the Court, and pleading for her life, propose that she be sentenced to perpetual imprisonment in the Alipore jail with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The charge is fully and clearly proved against the prisoner, on the evidence of the witnesses, and on her own confessions. In that made before the deputy magistrate, she seeks to justify herself in some degree, by alleging that the deceased had excited her anger by pinching her, while she was groping in the water for shells, but there can be no doubt, that she disclosed the real truth in her first confession, before the darogah, in which she said, she had been led to commit the crime by the desire to possess herself of the boy's silver waist chain. She appears to have been deserted by her husband, and to have, in consequence, found difficulty in supporting herself and her child. We convict the prisoner of the murder charged, but on the ground that she may have been driven to the commission of the crime under the pressure of want; and with reference to her extreme youth, we accede to the recommendation of the sessions judge founded on these considerations, and sentence her to imprisonment for life in the Alipore jail, with labor suited to her sex.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND RAMCHURN ROY,

versus

GOBURDHUN BAGDEE CHOWKEEDAR (No. 1,) BISSONATH MOOCHEE (No. 2,) AND GUDDADHUR CHUCKERBUTTY (No. 3.)

24-Pergunnahs.

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Case of GOBURDHUN BAGDEE, CHOWKEEDAR and others.

Conviction and sentence in a case of dacoity with wounding upheld as to one prisoner, but reversed as to two others.

CRIME CHARGED.—1st count, prisoners Nos. 1, 2 and 3, dacoity attended with wounding and plunder of property worth Rs. 17-3; 2nd count, prisoner No. 1, having in his possession the whole of the plundered property, knowing it to have been acquired by dacoity.

CRIME ESTABLISHED.—Dacoity attended with wounding.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. S. Torrens, sessions judge of 24-Pergunnahs on the 6th May, 1854.

Remarks by the sessions judge.—This is a commitment for a dacoity on the house of the prosecutor Ramchurn Roy, in Ramessurpoor, thannah Rajapoor, when his son, a boy of six years old, was wounded. Prosecutor was at the time absent from the house, which was occupied by his children, the eldest being a widow of about sixteen or seventeen years old. It appears that the three prisoners, Goburdhun Bagdee No. 1, Bissonath Moochee No. 2 and Guddadhur Chuckerbutty No. 3 had met at a drinking shop in the village, on the day of the dacoity, which was then arranged on. Information on this point is given by the witness Surroop Bagdee No. 21, who deposes that on making the discovery, he disclosed it to the burkundaz of the next *pharree.* The witness No. 1, Ramsumon Opadhia deposes that he and others were employed by this burkundaz to lay wait for the dacoits which they did, and on their retreat with a box plundered, containing property of the prosecutor, the prisoner Goburdhun No. 1 was cut down by Ramsumon, witness No. 1. The confession of Goburdhun led to the discovery of the others, it was taken by the darogah the morning after the occurrence, and repeated before the magistrate on the next day. The other two prisoners admitted to the darogah that they had gone on instigation to commit the dacoity, but taken no active part in it. Before the sessions, Goburdhun Bagdee, prisoner No. 1, pleads that he had an intrigue with the prosecutor's widow daughter, Prosonomoye, that he was discovered with her by Callycoomar Mitter, witness No. 11, a relative of the family, when he was attacked and wounded by wit-

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Case of GOBURDHUN BAGDEE, CHOWKEEDAR and others.

ness No. 1, and in the conflict, a blow of a sword fell on the wounded boy Deenonath. The prisoner No. 2, Bissonath, pleads that he discovered Prosonomoye in improper intercourse with one Sumboo Joogee, and that in consequence of this he had been named as a culprit in the dacoity. Prisoner No. 3, Guddadhur Chuckerbutty pleads, that he had merely collected with the other villagers after the dacoity, that he had a quarrel with the prosecutor some time before about a tree, and that he has therefore been accused. The magistrate has discharged the burkundaz of the *pharree* above alluded to, considering, it appears, that he connived at the dacoity, he was arraigned before him as implicated, but released for want of proof; but I think it probable that he and the witness Surroop were both parties to the dacoity. I convict the prisoner No. 1, on his own confession and the evidence as to his wounding and seizure. In ordinary cases the mention by one prisoner in his confession, of the names of others can have no considerable weight towards proof of the crime charged as respects those so mentioned, but in this case, there is likewise the circumstance of the other prisoners having been drinking together on the day of the occurrence and the statement of Surroop, witness No. 21, on this point, and also the fact that Prosonomoye, who has not, however, been sent in as a witness, stated before the darogah that she had recognized Bissonath Mochee prisoner No. 2, who it appears was recognized by the boy Deenonath. The defences entered into, likewise lead to conclusion of guilt on part of both these prisoners. No. 3 absconded immediately after the dacoity, and states his reason for doing so, was, that he heard Goburdhun prisoner No 1, had named him in his confession. If Goburdhun did so name him, and that he therefore absconded, he must have been named before the darogah's investigation and his having been so, is in itself corroborative of the other evidence, as to his guilt. I am not satisfied as to how and by whom the wound was inflicted on the boy Deenonath, or that the dacoity was one of the desperate nature where wounding was intended. Considering all the prisoners equally guilty, I therefore sentence them only to twelve years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We uphold the conviction of Goburdhun, the proof against him being quite conclusive. It is not so however in the case of the two other prisoners. Their mofussil confessions cannot be relied upon, and the statements of the girl and the boy before the darogah, not being on oath, cannot be used as evidence against the prisoners. We direct their release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MUSST. DHOOPEE.

Backergunge.

1854.

August 24.

Case of MUSST. DHOOPEE.

The prisoner was convicted of wounding with intent to kill and sentenced by the sessions judge to 14 years' imprisonment. Appeal rejected.

CRIME CHARGED.—Severely wounding Musst. Abboo with intent to kill her on the 3rd June, 1854.

CRIME ESTABLISHED.—Wounding Musst. Abboo with intent to kill her.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge on the 30th June, 1854.

Remarks by the sessions judge.—This is a most deliberate attempt to commit murder. The facts of the case are briefly these.

Musst. Abboo brought up Docourie and married him to the prisoner. He now supports Abboo and the three live together. The occupation of Docourie obliges him constantly to be absent from home and Abboo and the prisoner are frequently left alone. It appears that the prisoner is a hot-tempered woman and is not given to domestic duties, and that Abboo is continually scolding her for this defect of character in a poor man's wife. These lectures of the old woman have produced no other effect than making the prisoner more unamiable than ever, and the old woman deposes that "the prisoner now regards her with that aversion, that she cannot bear the sight of her." For two months past, they have ceased to cook or to eat together, though living in the same house. Frequent are the quarrels between them and the veriest trifle is sufficient to produce a fiery contention.

It appears that on the morning of the 3rd June, Abboo* being ill with fever, asked the prisoner to fetch her some water to cook some rice, but the request was refused, and as usual some angry words were exchanged. Abboo procured the water for herself, cooked her rice and was eating it, when the following conversation and scene took place. Seeing the prisoner loitering about the house with a *dao* in her hand, Abboo asked her why she was idling her time in that manner. To this the prisoner replied, "In your eyes I am always idle." Almost immediately after this, while Abboo was still sitting at her meal, the prisoner seized her by the hair and inflicted on the back of her neck, two wounds with the *dao*. Abboo then caught

* Witness No. 1, Musst. Abboo.

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hold of the instrument and tried to pull the prisoner out of the house, screaming at the same time at the top of her voice. As she could not succeed in forcing the prisoner out of the house, she gave up her hold of the *dao* and was running out of the house, when the prisoner a third time struck her a blow on the top of the shoulder and was preparing to continue the assault when Burkutullah* saw her, and called upon her to desist. She then ran away, throwing the *dao* down on the road, and Burkutullah removed Abboo to his house, where several† other villagers immediately arrived, some‡ in time even to see the prisoner running off after she had thrown away the *dao*.

* Witness No. 13, Burkutullah.
† Witness No. 14, Mataboodin.
15, Allam Manjee.
10, Kaemoodin.
11, Mun Gazee.
12, Runjoo.
16, Musst. Monglee.

The *dao* was afterwards picked up by the chowkeedar§ close to the spot, and the next day he traced the prisoner to the house of her uncle Zohiroodeen, living some distance off, and afterwards delivered her with the *dao* to the police. The *dao* weighs a few grains less than half a *seer*, and it was covered with blood when it was picked up.

§ Witness No. 2, Chand Gazee, chowkeedar.

These particulars are proved by the evidence of the parties whose names are marginally appended to the above remarks. The deposition|| of the medical officer further establishes that one of the wounds on the neck was of a very severe and dangerous character, that it penetrated to the vertebræ, cutting into that important bone and that the spinal marrow only escaped by a very little. He considers that the wound, as well as two others on her person, were from some cutting instrument and thinks that the *dao*, with which the deed is said to have been done, is a likely instrument to have caused the wounds. The woman is pronounced out of danger.

|| Witness No. 5, Dr. M. Scaolan.

The prisoner confessed the crime before the police¶ and before the magistrate.* She said her intention was to murder Abboo, who prevented her from carrying on an illicit intercourse with a man of the same village by name Nocouree. This individual she says had concerted the murder with her and had made a hole at the back of the house, intending to bury their victim in it.

¶ Witness No. 3, Unnutoolah.
,, ,, 4, Kalla Gazi.
,, ,, 6, Ram Gutty Doss.
* Witness No. 7, Kally Coomar Dhur.
,, ,, 8, Gobind Chunder Sain.
,, ,, 9, Imam Bux.

This hole is described by the police as having been fresh dug and its dimensions are just such as would, with a little more earth dug out of it, have suited for the purpose for which the prisoner says it was made. None of the witnesses however say

that they saw Nocource at the prisoner's *barree* that day. None know of the existence of an amour between him and the prisoner, and Abboo, who lives in the same house, disavows any knowledge of it.

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Case of Musst. Dhoopee.

At the sessions, the prisoner threw the crime upon Nocource and denied that she took any part in it. She admitted that she made her thannah and foujdary confessions, but said that the former was dictated to her by the police.

The assault is fully proved against the prisoner and the object of it is equally clear.

If the prisoner's confessions are to be believed, and I see no reason why they should not be, it is evident that the murder of Abboo has been a long settled thing in the determination of the prisoner. If the hole was made for the purpose of burying the poor creature, when the diabolical design of her death was put into effect, it is plain that the quarrel on the morning of the assault was but a pretext or rather a means to work up the prisoner's mind and temper to the proper pitch to enable her in a becoming spirit to execute her cruel purpose; that she failed to do it, was luckily owing to the bluntness of the instrument and the toughness of the intended victim's neck.

The law officer finds the prisoner guilty of wounding Musst. Abboo with the intent to kill her, and in perfect agreement with that verdict, I have sentenced the prisoner to imprisonment for fourteen years in the zillah jail with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) In her petition of appeal, the prisoner pleads that she is the victim of a conspiracy amongst her husband's relations, who have given evidence against her, and that her husband's aunt wounded herself with her own hand. The circumstances of the case, however, are very fully detailed in the sessions judge's remarks on the trial, and the facts there stated are borne out by the evidence and the confession of the prisoner on record. We see no reason to interfere with the sentence passed, and reject this appeal.

PRESENT:
A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND OTHERS,
versus
JUGOOBUNDOO BOSE.

Dacca.

1854.

August 25.

Case of JUGOOBUNDOO BOSE.

The petition of appeal of the prisoner convicted of administering intoxicating drugs, was rejected.

CRIME CHARGED.—1st count, administering intoxicating drugs to plaintiffs, Mussts. Kishoremoney and Pearee, and stealing from them in cash and ornaments to the value of Rs. 211-10; 2nd count, having in his possession property, knowing it to have been obtained by the above theft, and pawning it to the defendant, Boodhoo Sha.*

CRIME ESTABLISHED.—Theft by administering intoxicating drugs to plaintiffs, and pledging a portion of the stolen property.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 13th June, 1854.

Remarks by the sessions judge.—The prosecutrixes, women of the town, stated that the prisoner, Jugoobundoo Bose, whom they had not previously known, came to their house at night and gave them some sweetmeat, after eating which they became insensible, and on the following morning found the house had been robbed. Some days after, the prisoner, Jugoobundoo, was apprehended, and a part of the stolen property found in the possession of Boodhoo Sha, prisoner No. 11, to whom it had been given in pawn by the first named prisoner.

This evidence was corroborated by several witnesses,† who found the women insensible and had seen the sweetmeat given, who recognized the property stolen as that of the women, and that it had been given in pawn by the prisoner No. 10.

† Nos. 18, 19, 20, 21 and 24.

The law officer convicted the prisoner, Jugoobundoo No. 10, on both counts of the calendar.

The prisoner in his defence said, the whole was a conspiracy, but contradicted himself. He says Gooroo Churn has conspired from jealousy, but in the foujdary said he had not known the women before. He confessed being at the women's house, but said in a petition to the magistrate, he had witnesses to prove he was at home. There are some slight discrepancies in the evidence for the prosecution, but not to any material extent and

* Acquitted by the lower court.

it is not credible, that if the charge were a conspiracy, Boodhoo Sha, the other prisoner, would have allowed himself to have been made at such risk a party to it. I concurred in the *futwa*.

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Case of JUGOOBUNDOO BOSE.

Sentence passed by the lower court.—To be imprisoned for a period of seven (7) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The prisoner admits that he passed the night in question with Musst. Pearce. She and her mother were found next day stupified from drugs. The clue to his apprehension was afforded by Gooroo Churn Mallee, who had seen him at the house. It is proved too, that he pawned to Boodhoo Sha, part of the stolen property. The Court therefore see no reason to interfere with the sentence, and reject the appeal.

The Court remark that the sessions judge has not reported the case at all fully or lucidly. He has omitted to shew how Gooroo Churn was able to identify the prisoner, and how it was found out that he had pawned the property to Boodhoo.

PRESENT:

B. J. COLVIN, Esq., *Judge.*

GOVERNMENT,

versus

GEORGE TREVOR ELLIOTT.

24-Pergunnahs.

1854.

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Case of GEORGE TREVOR ELLIOTT.

The prisoner was convicted of perjury.

CRIME CHARGED.—Perjury in having, on the 28th February, 1854, deposed under an oath, before Mr. A. Hope, joint-magistrate of Barasct, and a justice of the peace, that he did not write the letter, dated 10th, 1, 1854, viz., 10th January, 1854, to Mr. L. Fraser, and that the statements in the letter are false and that he did not assist the police in apprehending the *lattials*. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. A. Hope, joint-magistrate of Barasct.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 13th June, 1854.

Remarks by the officiating additional sessions judge.—The prisoner was the superintendent of one of the Sunderbun cultivations in the employ of the grantees. In an affray, in which the grant people were concerned, the prisoner behaved very

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well and assisted the Police in quelling the disturbance and arresting the ringleaders, among whom were his own people. He wrote an account of the affair and sent it as a piece of news to Mr. L. Fraser, a witness in the case, who was his former employer and resided in the neighbourhood. That letter is dated 10, 1, 54, filed with the record. Subsequently on 28th February, 1854, the prisoner was examined before the joint-magistrate of Baraset in the case adverted to, and in that deposition, which was given under an oath, he denied having assisted the police in arresting the rioters and having written the letter to Mr. Fraser, adding that the contents of the letter produced were false and that the writing and signature were not his. This he did, to release the parties he had himself implicated, acting probably under the influence of his employers, whose creatures the offenders were. The evidence adduced for the prosecution goes to show that this statement on the part of the prisoner is false, and that he did assist the police in apprehending the rioters and write the letter, which disclosed that fact. The prisoner denies the charge before this court, and asserts that the case has been got up against him with the view of furthering the release of a writer of the witness, Fraser, taken up by the police for riot and plunder. He declines to call the witnesses named to his defence on the plea that they have been tampered with by Fraser's brothers.

Sentence passed by the lower court.—Three (3) years' imprisonment without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I see no reason to interfere with the sentence passed upon the prisoner. The signature upon the petition of appeal corresponds with that on the letter in question, and is corroborative of the truth of the prosecution. Appeal rejected.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND MANICK SHEIKH,

versus

MOKIM SHEIKH.

Nuddea.

1854.

August 28.

Case of MOKIM SHEIKH.

Prisoner convicted of wilful murder, but sentenced, with reference to the circumstances of the case, to fourteen years' imprisonment.

CRIME CHARGED.—Wilful murder of Bedoor Sheikh.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 17th August, 1854.

Remarks by the sessions judge.—This crime was wholly unpremeditated, and was not unprovoked. The principal witness against the prisoner is his sister, Nidooree, whose husband, Bedoor Sheikh, was by her brother killed. Nidooree's child was crying and she struck it; her husband angrily abused and beat her: then the prisoner, Mokim, interfered to protect his sister; he laid hold of Bedoor; the two men spoke angrily at each other; Bedoor struck Mokim with a stick, when Mokim went from the *oothan*, where the quarrel happened, took up a spear *(surkee)* from his house and flung it at Bedoor; the *surkee* pierced Bedoor's right side and in a minute or two, he was dead. Every step in the lamentable quarrel appears to have followed in quick succession. It occurred on Thursday, the 15th June, after night-fall.

The evidence of Nidooree and the confessions made by the prisoner, both to the police and magistrate, closely correspond. Prisoner said, he meant to throw the *surkee* at Bedoor's feet; it was dark, and Bedoor being speared as he was, was accidental. Nidooree too says it was dark: when her husband struck Mokim, she heard, rather than saw the blows.

Prisoner immediately ran off and hid himself. Three days after he was discovered in the drying oven of a silk factory.

Teekoo Sheikh who is related to prisoner and lives in the same house, came up immediately after: he saw Mokim as he was going off, who told him what he had done. He found Bedoor dead. Tamashah, mother of Nidooree and prisoner, describes the origin of the quarrel, but says she had gone out before the deceased was struck; coming back, she found him dead.

An attempt was made, it is not clear by whom, to conceal the crime by burying the body, but by evening of the day following the occurrence, information was given to the police by the deceased's brother, Manick Sheikh, and by the chowkeedar.

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Case of MOKIM SHEIKH.

The confessions of the prisoner are attested, and witnesses who were present and saw the body of Bedoor exhumed, have been examined.

Prisoner adduced no witnesses. He says it was dark, and he was lying down. Bedoor happened to be washing his hands, just then a dog barked, and he threw at the dog a spear, which accidentally struck his brother-in-law. "Why should I murder him?"

The law officer, sitting with me at the trial, finds the prisoner guilty of wilful murder. But I demur to this verdict. I am not to extenuate the criminal use of so deadly a weapon as the *surkee*, but it is impossible to consider the evidence without feeling that the fatal result of its use in this case was unexpected by the prisoner. He flung it in a passion, but it was dark when he flung it, and his passion had been raised by being himself assaulted when he had interfered to shield his sister from blows. I think an imprisonment, not exceeding ten years, will be a sufficient punishment under a conviction for culpable homicide.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We agree with the *futwa* that the crime established is murder; the degree of provocation received did not justify the use of such a weapon as the prisoner brought from his house and recklessly flung at the deceased, piercing him through the breast and killing him on the spot. Taking into consideration all that is most favorable to the prisoner, as urged by the sessions judge, we convict him of the murder and sentence him to fourteen years' imprisonment with labor in irons.

PRESENT:

J. DUNBAR, AND H. T. RAIKES., ESQS., *Judges.*

GOVERNMENT,

versus

OOMER ALLEE.

Arracan.

1854.

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Case of OOMER ALLEE.

Prisoner convicted of forgery in having altered an

CRIME CHARGED.—1st count, forgery in having altered an order of the 2nd principal assistant commissioner, passed on a petition of Twaingway on the 16th January, 1854, after the said order had been properly recorded and signed by the 2nd principal assistant commissioner; 2nd count, in having also altered the copy of the said order in the diary, after it had been correctly entered therein.

CRIME ESTABLISHED—Forgery.

Committing Officer.—Mr. W. T. Law, 2nd principal assistant commissioner of Akyab.

1854.

August 28.

Case of OOMER ALLEE.

Order of the Principal Assistant Commissioner, sentenced to three years' imprisonment.

Appeal rejected.

Tried before Captain H. Hopkinson, commissioner of Arracan, on the 16th March, 1854.

Remarks by the commissioner.—A petition had been presented to the committing officer Mr. Law, charging one Kodaway with having carried off property to the value of Rs. 400, but the petitioner failing to attend for the prosecution of his complaint, the case was dismissed in default; the petitioner then brought a 2nd petition praying that the case might be again brought on the file, on which Mr. Law, as the matter seemed important, passed an order directing it to be placed with the papers to be laid before the court, this was on the 16th of January; on the 19th idem Mr. Law's scrishtadar brought the petition to him and pointed out an alteration in the order. It had been in the Burmese: "It is hereby ordered, let it be filed with the record and produced," it was altered to: "It is hereby ordered, let it be rejected and placed with the records," the hand-writing of the prisoner who is the diary keeper was recognized in the alteration; he was questioned, and denied it, stating that it had been made by some body else before he received it, to enter in the diary, but in examining the diary, it was found, that the proper order had been there also first entered and then altered to correspond with the alteration of the order on the petition; the prisoner at once acknowledged the diary alteration, and being then put on his trial for the forgery he also confessed the alteration of the original order; the prisoner also confessed both alterations at the sessions. Mr. Law who was examined as a witness in the case before me deposed to the forging facts, stating his opinion that the alteration was made to prevent the case being inquired into. The prisoner denied this; but he has nothing beyond his bare assertion to urge to rebut the presumption of the criminal intent, which the proof of the forgery conclusively establishes; I therefore convicted him of the crime charged and sentenced him as recorded in column 12; remitting labour in consideration of his physical constitution and previous habits, which would have made labor a cruel aggravation of punishment. The case as to which the forgery was committed was dismissed.

Sentence passed by the lower court—Three (3) years imprisonment without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner appeals on the ground that the alteration, in the order which he admits, was made by him, under the impression that the order, as first written, was incorrect and not in accordance with the instructions of Mr. Law. We cannot, however, put so favorable a construction on his act, for Mr. Law, himself says, that the order, first written, was the correct one; and that order was addressed to and taken down by another mohurrir, and correctly

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copied by the prisoner into the daily book. There is consequently no reasonable connection between the plea urged in defence, and the facts of the case. Seeing no reason to interfere with the conviction and the sentence, we reject the appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND OTHERS,

MEER SHURAFUT ALLY (No. 1,) LOTFUL ROHMAN ALIAS LOTTA MEA (No. 2,) MEER YAD ALLY (No. 3), DEANUT ALIAS DEENOO (No. 4,) SHEIKH BAGOO (No. 5,) KHATER GOWARDAR (No. 6,) KHOWAZ GOWARDAR (No. 7,) SHEIKH MUDHOO (No. 8,) SHEIKH HAVIL (No. 9,) AND SHEIKH NEEMYE GOROOA (No. 10.)

1854. August 29. Case of MEER SHURAFUT ALLY and others.

Conviction of the prisoners of dacoity in the two prosecutors' houses and sentence passed by the sessions judge affirmed in appeal.

CRIME CHARGED.—Prisoners, Nos. 1 to 15; 1st count, belonging to a gang of dacoits; and 2nd count, committing dacoity in the house of Nubokishore and Brijonath Podar, prosecutors, and plundering therefrom property to the value of Rs. 1,086-7; 3rd count, being accomplices in the commission of the dacoity, 4th count, receiving and possessing part of the plundered property, knowing the same to have been so obtained. Prisoner No. 16; 1st count, belonging to a gang of dacoits and being the prime instigator of the above dacoity; 2nd count, being accessary to the dacoity before and after the fact; 3rd count, being privy to the case; 4th count, receiving and possessing part of the plundered property knowing the same to have been so obtained. Prisoner No. 17; 1st count, accessary to the dacoity before and after the fact; 2nd count, being privy to the case; 3rd count, receiving and possessing part of the plundered property, knowing the same to have been so obtained. Prisoner No. 18; 1st count, privity; 2nd count, receiving and possessing part of the plundered property, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Dacoity in two separate prosecutors' houses and receiving plundered property, knowing the same to have been so obtained.

Committing Officer.—Mr. W. H. Brodhurst, officiating joint-magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, commissioner of Dacca, with powers of a sessions judge.

Remarks by the commissioner.—The prisoners are charged

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with dacoity, &c., as detailed above. It appears that on the night of the 3rd June last, a dacoity was committed on the houses of the prosecutors, who are relations and live in the same homestead, and property to the amount value of Rs. 1,086-7 plundered. No clue appears to have been obtained until the 15th of June, when the police received information that the prisoners Nos. 1, 2 and 3 had left their houses two or three days before the dacoity occurred and gone to the house of Moonshee Tumeezoodeen, in the Jessore district, and returned on the day following the dacoity. A few days afterwards, they again left their homes and came back the next day with three bundles of clothes and some gold and silver ornaments. On this information they were arrested, their houses searched, and property found. They confessed and implicated others who were apprehended and property recovered from them. The fact of the dacoity having been committed is clearly established. There are discrepancies in the statements of those persons through whom the first clue was obtained, but I do not consider them of importance as affecting the case or the guilt of the prisoners. It appears that it was planned, and that the dacoits assembled at the house of Moonshee Tumeezoodeen in the Jessore district, from whence they set out in a gang of about thirty by water to within a short distance of prosecutors' residence, where they left their boat and proceeded on foot. The prisoners confess both before the police and the joint-magistrate, and their confessions have been duly attested before this court. The recovery of the plundered property either from the houses of the prisoners, or from places where it was concealed as pointed out by them, has been established by evidence. The recovered property has also been recognized by the prosecutors and proved to belong to them. It is worthy of notice that the item of property (No. 2 of prosecutor's list, a gold necklace) was recovered in pieces in three different zillahs, Furreedpore, Jessore and Nuddea, from the prisoners Nos. 3, 8 and 9. The prisoners deny the charge, but have not set up any good defence, neither does the evidence of the witness examined in their behalf tend in any way to exculpate them. Considering the crime of dacoity and having in their possession plundered property knowing it to have been so obtained, proved against the prisoners Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, they have been sentenced to ten (10) years' imprisonment, with hard labor in irons and in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T Raikes.) The whole of the prisoners have appealed.

Mr. Norris appears on behalf of prisoner No. 1, Meer Shurafut Ally.

Baboo Sumbhoonath Pundit for the prosecution.

Mr. Norris endeavoured to lead the Court to the impression

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that the confessions of his client were not consistent with probability, but he admitted that he was not prepared to shew that they had not been freely and voluntarily made as set forth in the certificates. The Court do not find any thing in the confessions, either of the prisoner, for whom Mr. Norris appears, or of any of the other prisoners, of such a nature as to induce even a remote doubt of the fact, that they were voluntarily and intentionally given. The circumstances detailed in the several confessions afford direct evidence of the complicity of the prisoners in the crime. The Court therefore reject the appeals and confirm the sentence of the sessions judge.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

JUWAD ALLEE.

Midnapore.

1854.

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Case of JUWAD ALLEE.

The prisoner, a police jemadar, was convicted of bribery, having received nine rupees to release a prisoner suspected of dacoity.

Appeal rejected.

CRIME CHARGED.—1st count, bribery and corruption, knowingly and wilfully having released Hurro Bhooyeah after arresting him on a charge of dacoity in consideration of a bribe of 2 Rs. being paid to him by the said Hurro Bhooyeah; 2nd count, bribery and corruption in having knowingly and wilfully taken a bribe of 5 Rs. from Nursing Gyen, father of Setul Gyen and a bribe of 2 Rs. from Juggernath Dass, father of Ruttun Dass, on condition that he would not arrest the said Setul Gyen and Ruttun Dass on a charge of dacoity.

CRIME ESTABLISHED.—Bribery.

Committing Officer.—Mr. G Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 20th July, 1854.

Remarks by the sessions judge.—The prisoner pleads *not guilty*. On the night of the 5th January, 1854, a dacoity was committed in the house of one Gopaul Dass (vide statement No. 6 for the month of April). The prisoner, who was then jemadar of the Nimal thannah was deputed to arrest Lukhun Mytee, identified by the prosecutor as one of the robbers. The witness No. 1, Pursooram Patter, assisted the prisoner to apprehend Lukhun Mytee, and at the same time informed him that Hurro Bhooyeah, Ruttun Dass, Puhul Dass, Seetaram Gyen, Pursotum Dass (all convicted as accomplices in the said dacoity) were absent from their homes on the night of the dacoity, that they were bad characters and that he suspected they were con-

cerned in the robbery. The prisoner on this arrested Hurro Bhooyeah and then demanded from him and relatives of other parties who were not present, a sum of money to suspend further proceedings. Nine rupees were then paid to him. He released Hurro Bhooyeah, took steps to apprehend the others and returned to the darogah to whom he made no mention of what had occurred, which however was subsequently brought to light by the subsequent confession of Lukhun Mytee. The witness Pursooram Patter No. 1, gives a circumstantial history of all that took place, and though his evidence has been recorded no less than four times, and in six separate places, it has never varied in any one important particular, leaving the strongest impression of its truthfulness and giving every title to credit. It is also corroborated by one eye-witness to the payment of money, and others who relate the circumstances under which the latter was collected, and what afterwards followed. The prisoner in his defence pleads that the charge has been concocted by the darogah, with whom he is at enmity, to ruin him, and cites sundry witnesses who can say nothing, however, in his favor touching the charge on which he is arraigned. The assessors, with whose aid the trial was held, declare the prisoner guilty of both counts of the charge. I concur in this finding and accordingly sentence him as shown in the statement.

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Case of JUWAD ALLEE.

Sentence passed by the lower court.—One year's imprisonment without labor and irons in the civil jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) From the evidence of the witnesses in this case, we see no reason to doubt the truth of the chowkeedar's story, that he received the nine rupees from the individuals, who were first suspected and left unmolested by the prisoner, on payment of a part of the money demanded by him. We concur in the propriety of the prisoner's conviction and reject the appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND MUCHAI ONGINE,

versus

KYANJYNE.

Arracan.

1854.

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Case of
KYANJYNE.

Prisoner convicted of culpable homicide, sentenced to seven years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Affray attended with culpable homicide of Kyan thaong, son of Twyong on the 14th day of the waxing moon Natdan 1215 M. S. corresponding with the 14th December, 1853.

CRIME ESTABLISHED.—Affray attended with culpable homicide.

Committing Officer.—Capt. G. Faithful, principal assistant to the commissioner at Akyab.

Tried before Capt. H. Hopkinson, commissioner of Arracan, on the 22nd March, 1854.

Remarks by the commissioner.—This case arose out of a squabble regarding the tying up of some buffaloes belonging to Twyong, father of the deceased Kyan thaong, and also of the prisoner No. 3, Hinwaiong and No. 4, Shooaibookine. No. 3, prisoner Hinwarong, was tying up the buffaloes under a shed, when No. 5, prisoner Kyanjyne, opposed his doing so on the grounds of the shed being used as a place of public resort. The deceased Kyan thaong came up to espouse his brother's quarrel when he was met by Kyanjyne's mother, who laid hold of him and pulled his clothes, whereat Kyan thaong savagely felled her to the ground with a piece of firewood, which so enraged Kyanjyne prisoner No. 5, that snatching up a heavy wooden rice-pounder about five feet long, and as thick round as a man's arm he dealt Kyan thaong a blow with it with all his might on the skull and completely fractured it, so that Kyan thaong at once becoming insensible died on the following morning; it would appear that *after* this, words and blows passed between Shooaibookyne No. 4, and Nos. 6 and 7 Abboo and Oungzanfoo, but the principal assistant commissioner appears to have thought that their action was simultaneous, and partly in consequence of this, and partly because he did not like to trust to the evidence of the deceased's relatives, that the prisoner Kyanjyne No. 5, was the person who killed Kyan thaong, he thought it proper to conclude that it was done between them all, and therefore committed them all; this was perhaps the safest course, and I think the commitment was justifiably made, but the evidence before this court quite satisfies me that the prisoner Kyanjyne No. 5, is the man who killed Kyan thaong, and with an instrument calculated to cause death or great bodily harm, and that would

have aggravated the crime to murder, but for the provocation Kyanjyne had received in the assault on his mother, which brings it within the charge on which I have convicted and sentenced him as recorded in columns 10 and 12. I have acquitted all the other prisoners, first, because I am not satisfied from the evidence that Nos. 4, 6 and 7 were even present when Kyan thaong was struck down, and secondly, allowing that they were with No. 3 present, the assault on Kyan thaong was clearly not in pursuance of any common intent, or had any connexion with their acts, but sprung from Kyanjyne's (No. 5,'s) anger at seeing his mother struck.

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Case of KYANJYNE.

Sentence passed by the lower court.—To be imprisoned for seven years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) It seems to us that the commissioner, who tried the case, has taken a proper view of it, and sentenced the prisoner only for the homicide. The evidence is conclusive and clear as to this man's guilt, and we see no reason to interfere with the sentence passed upon him. We reject this appeal.

PRESENT:

SIR R. BARLOW, BART., J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

SEFATOOLLAH ALIAS SUKHAWUT GHAZEE (No. 1,) AND ZEEAOOLLAH GHAZEE (No. 2.)

24-Pergunnahs. 1854.

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Case of SEFATOOLLAH and another.

Two prisoners convicted of aiding and abetting in culpable homicide sentenced, one to transportation for life, and the other to fourteen years' imprisonment.

CRIME CHARGED.—1st count, wilful murder of Shurreef Ghazee; 2nd count, accomplice in the above.

Committing Officer.—Moolvy Abdool Luteef, deputy magistrate of Kalaroa.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Allipore on the 30th June, 1854.

Remarks by the officiating additional sessions judge.—The prisoners are charged with the wilful murder of Shurreef Ghazee, under the following circumstances, and plead *not guilty* to the indictment.

The son of the deceased, Ghunni Ghazee by name, abducted Chumpa, the wife of the prisoner Sefatoollah alias Sukhawut Ghazee, No. 1, and induced her to leave her husband's house and protection. This occurred three days before the murder. The circumstance naturally exasperated the prisoner and he threatened in return to entice away the deceased's daughter, Dukhina,

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a young married woman. He also vowed vengeance on the old man and his wife for the wrong their son had done him. The old couple lost no time in removing Dukhina to her husband's family, and being in constant dread from the threats of the prisoner, made up their mind to leave the neighbourhood and seek an abode removed from his persecution and vengeance. They were about carrying out their project, when towards day-dawn, the prisoners, who seem to have been apprized of their movements, appeared armed with heavy sticks. On seeing the deceased, who was near his cow-shed tending some cattle, the prisoner, Sefatoollah, abused him and rushing up to him gave him a severe blow across the back with his stick. His companion, the prisoner, Zeeaoollah Ghazee, No. 2, then struck him also. The old man staggered to a field close at hand and fell down, where he was beaten severely while on the ground, by the prisonor No. 1. His wife's cries for help brought some of the neighbours, when both the prisoners ran off. The deceased expired on the spot. These particulars will be proved by the persons named and numbered in the margin.*

The prisoner No. 1, was arrested immediately by the witness noticed in the margin.† He is the village chowkeedar and hearing cries for help, while on his beat, rushed to the spot and arrived just as the prisoners had made off. Being told that the prisoner Sefatoollah had done the deed, he secured him.

The inquest held on the body is attested by the persons marginally named,‡ and shows that there were seven contused wounds apparent on the person of the deceased, one across the chest, one on the right shoulder, one on the temple and four on the back.

No *post mortem* examination of the body was held, owing to its having reached the station of Dum-Dum, where the surgeon resides, in a state of absolute putrefaction. Death occurred on the 21st of May and the surgeon's letter, announcing the state of the body, is dated the 28th idem.

The prisoners make no defence beyond a denial of the charge, pleading the improbabilities of the case in their favor. Six witnesses were named to the defence of the prisoner, Zeeaoollah Ghazee No. 2, but he declined to have four of the number examined. The two he called say nothing about him.

The *futwa* of the law officer acquits the prisoners of wilful murder, but convicts them of culpable homicide, and declares them liable to *deeut*.

* Musst. Mungla Bewa, witness No. 1.
Abid Sheikh, witness No. 2.
Sufimuhomed Sheikh, witness No. 3.
Sona Ghazee, witness No. 4.

† Kamullah Chowkeedar, witness No. 6.

‡ Samachurn Mitter, acting darogah, witness No. 7.
Khazir Mundul, witness No. 8.

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I cannot concur in this finding. It is in direct evidence that the prisoner Sefatoollah alias Sukhawut Ghazee repeatedly struck the deceased with a club, once on the head, which was probably the mortal blow, and that the deceased expired then and there in consequence of such beating. It is equally in evidence that the prisoner had received considerable provocation and was at the time in a highly excited and exasperated state. Had the violence, engendered by the wrong he had sustained, been directed against his injurer and the same fatal consequences resulted, I should have been quite prepared to plead for him in extenuation of crime and mitigation of punishment, but when I look upon his victim, a poor defenceless old man, and reflect that he ruthlessly slew him without cause or provocation, I can designate his crime by no other name than murder, and propose for him no sentence, but death. It is clear from the evidence that the prisoner, Zeeaoollah Ghazee, is the constant companion of the prisoner Sefatoollah and held some sort of grudge against the deceased, for refusing to give him his daughter, Dukhina, in marriage. It also appears that he too was carrying on an intrigue with Chumpa, his co-prisoner's fugitive wife, and possibly entertained the same unnatural sympathy to the deceased on account of his son's abduction of her. And there is ample proof that he hit the deceased once with a stick and thus took part in the murderous assault. I convict him therefore of being an accomplice in the murder, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present Sir R. Barlow, Bart., Messrs. J. Dunbar, and H. T. Raikes.)

Sir R. Barlow.—The sessions judge convicts the prisoner No. 1, Sefatoollah, of murder and prisoner No. 2, Zeeaoollah of being his accomplice, and proposes that sentence of death be passed upon the former, transportation for life on the latter.

The circumstances which gave rise to the murder are detailed in the letter of reference, submitted by the sessions judge.

The evidence clearly proves that *both* the prisoners inflicted repeated blows on the deceased after he fell, in consequence of which very shortly afterwards he died. The deceased was an old man, father of Ghunnee Ghazee, who had some days previously gone off with the prisoner Sefatoollah's wife. The prisoner in consequence of this used to threaten to carry off Dukhina, the daughter of the prosecutrix and the deceased; they were afraid of this, and removed her some days before to her husband's house. They were themselves about to quit their own residence in the village, when in the morning a little before day-break, the prisoner No. 1, as deposed by the prosecutrix, went up to the deceased, who having tied up his cow was going off with her to Kadahattee, abused him and said, Where are you going you rascal? and struck him on the head, and knocked him down.

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Prisoner No. 2 gave him also a blow, the deceased fell and they continued beating him on the ground till he died. In the sessions court she only charged prisoner No. 1 with the repeated assault, but all the eye-witnesses, near neighbours, who heard her crying out, have, from first to last, deposed that *both the prisoners* inflicted repeated blows upon the deceased as he was on the ground, the witnesses assisted him to the best of their means, but he was senseless, speechless, and could scarcely breathe, and expired shortly before day-break.

The murder is, in my judgment, most wilful; neither of the prisoners had any cause for quarrel with the deceased; he had done nothing to irritate him; on the contrary, in order to avoid any disturbance, removed his daughter and was himself with his wife, about to remove, when he was assaulted without having given any provocation, and cruelly murdered. I would sentence in concurrence with the sessions judge, the prisoner No. 1 to death. I cannot see any grounds for mitigation of sentence in the case of the prisoner No. 2, he appears to have joined the other prisoner in the assault of a man who, as he says in his answer, "never did him an injury" and with whom he had no enmity. The assault was continued till the breath was knocked out of the deceased on the ground, and he died very shortly afterwards; death is clearly proved to have ensued on the assault, though no *post mortem* examination took place on the corpse when it reached Dum-Dum, where the surgeon resides, in a state of absolute putrefaction.

It is difficult to account for so brutal an attack committed by two men on an old unoffending man; no cause can be assigned for it; certainly nothing was said or done on the spot by the deceased, which could give rise to angry feelings, death almost immediately followed, and the prisoner No. 2 is not less guilty of wilful murder than the other prisoner, No. 1. For the above reasons, I am of opinion that prisoner No. 2 should also suffer capitally.

Mr. H. T. Raikes.—I cannot concur with Sir R. Barlow in convicting the prisoners of wilful murder and sentencing them capitally.

The varying statements of the witnesses, at the foujdary and sessions, prevent my relying implicitly on their evidence as to the particulars of the assault. It is, however, satisfactorily proved that the prisoners beat the deceased, and that he died shortly after they left him, but whether from a sudden rupture of the spleen or from the severity of the blows inflicted on him is not known.

The question of more importance to the prisoners is, whether they intended to take life.

The statement of the woman Munglee at the thannah, two days after the occurrence, which I think by far the most trust-

worthy account of the case, shows that Sefatoollah knew nothing of their intended departure from the village, till he saw them leaving their homestead, at that time Zeeaoollah was not with him. The assault which Sefatoollah then commenced, on finding that the old man was going away without giving him intelligence of his missing wife, was doubtless a cruel and brutal one, but the annals of our court show that the natives of this country seldom stay their hands on such occasions, because the person is old and helpless, and it does not necessarily follow that because the assault was cruel and fatal, that murder was really intended. I do not even see reason to believe that the attack was a combined or preconcerted one in any way; the meeting was clearly accidental, and the cause of quarrel between them not such as could suggest the possibility of malice to such an extent. Although then some blows were inflicted on deceased after he fell, by Sefatoollah, I see no grounds to presume that degree of malice on his part as would under our system justify a capital sentence against either of them.

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I would convict Sefatoollah and Zeeaoollah of aiding and abetting in culpable homicide, as it is impossible to determine whose blow actually caused death, and under the circumstances of aggravation, apparent from the age and helplessness of the deceased and the unprovoked nature of the attack made upon him, sentence the prisoners to imprisonment for life.

Mr. J. Dunbar.—I concur with Mr. Raikes in regarding this as a case of culpable homicide. The prisoner Sefatoollah would appear to have been angry with the whole family, because the son had gone off with his mistress, but there is no sufficient evidence to show that he ever contemplated anything further in the way of retaliation than carrying off Dukhinee, the daughter of the deceased. His threats, in my opinion, can only be viewed in this light. He seems to have been much annoyed on finding that the old man was about to leave the village clandestinely, after what had passed, and certainly very unjustifiably resorted to violence; but there is nothing whatever to shew, that such violence was premeditated; indeed the fact that his violence arose from the deceased's design to quit the village, of which he had only heard a few hours before, and of which he was convinced only when he saw the preparations for departure, precludes the idea of deliberate malice and premeditation. The case is, no doubt, one of an aggravated nature, and I therefore readily concur with Mr. Raikes in sentencing this prisoner to imprisonment for life in transportation. I think, however, that a distinction may justly and reasonably be drawn, between the guilt of Sefatoollah, and that of the other prisoner, Zeeaoollah. Taking the evidence of deceased's wife, as the safest guide, it is clear, that the former first assaulted deceased, followed him up when he ran away, and did not cease to make use of violence

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towards him, till the deceased was rendered senseless, and the neighbours had taken the alarm; whereas Zeeaoollah took part in the assault, and that in an inferior degree, only after Sefatoollah had again caught up the deceased. I would sentence the prisoner, Zeeaoollah, to fourteen years' imprisonment with labor in irons.

Perhaps Mr. Raikes may agree in mitigating the punishment of Zeeaoollah, in which case, it will be unnecessary to send the case on to another judge. I request, therefore, that the papers may be again laid before Mr. Raikes.

Mr. H. T. Raikes.—I have read Mr. Dunbar's minute on this trial, and with reference to the measure of punishment proposed by him, I have no objection to modify the sentence I recorded against the prisoner, Zeeaoollah, and to join Mr. Dunbar in sentencing him to fourteen years with labor.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*

GOVERNMENT,

versus

HARADHUN CHOWDHRY (No. 13,) PUDDO COACH (No. 14,) HULODHUR COACH (No. 15,) RAM CHUNDER NAPEET (No. 16,) AND HOOKRAH COACH (No. 17.)

Rungpore.

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Case of HARADHUN CHOWDHRY and others.

Conviction and sentence passed by the sessions judge in a case of highway robbery upheld in appeal.

CRIME CHARGED.—Prisoners Nos. 13 to 16; 1st count, committing highway robbery and carrying off property valued at Co.'s Rs. 52-15-3, belonging to Gourkishore Shah; 2nd count, having in their possession property acquired by the said highway robbery, knowing it to have been so obtained. Prisoner No. 17; 1st count, having in his possession property acquired by the said highway robbery, knowing it to have been so obtained; 2nd count, being privy after the fact to the commission of the said crime.

CRIME ESTABLISHED.—Nos. 13 and 15, highway robbery, and Nos. 14, 16 and 17, having in their possession property acquired by highway robbery, knowing it to have been so obtained.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 21st July, 1854.

Remarks by the officiating sessions judge.—On the evening of the 16th February, as Gourkishore Shah, a cloth-merchant, was returning home from Gooleah *haut*, about dusk, with his servant

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Beesha Coach, carrying a bundle of cloth, valued at 52 Rs., he was attacked by five or six men, one of whom struck him with a *lattee*, on which he ran off to a neighbouring village and told what had occurred to witnesses Nos. 3 and 4, and shortly after, Beesha came running and said, the men had carried off the cloth. Gourkishore recognized no one, and at first, Beesha said he did not know the robbers, but some suspicion arising on this point, he was questioned particularly and named prisoner No. 13, Haradhun Chowdhry, whose house was searched, but nothing found; however on questioning him, he said he would shew part of the property, and taking them to Puddo, prisoner No. 14's house, either he or Puddo's wife, for this is not very clear, showed where a bundle of cloth was buried under a heap of refuse, and prisoner No. 13, then acknowledged these clothes were his and prisoner No. 18's share of the robbery. On being asked where the remainder was, No. 13 named Ram Chunder Napeet, No. 16, who produced a bundle of cloth from under a straw heap near his house, then No. 16 named No. 15, Hulodhur Coach, and he also produced several pieces of cloth from a hole in some jungle near his house. Then No. 13 asked where Beesha's share was, and Beesha replied, that No. 15 had it, No. 15 said No. 14. Puddo Coach, and 17, Hookrah Coach, had it, and those two, Nos. 14 and 17, first produced Beesha's share from a straw heap, then No. 14 produced his own share from another part of the same heap, and lastly No. 17 produced his share from some grass belonging to a neighbour. The whole of these prisoners, Nos. 13, 14, 15, 16 and 17, confessed in the mofussil, but these confessions appear to have been taken in the evening and at night and in a hurried and informal manner. Before the joint-magistrate, however, they repeated their confessions, Nos. 13 and 15 acknowledging an active part in the robbery, while Nos. 14, 16 and 17, confessed only to sharing in the proceeds, and these confessions appear to have been perfectly voluntary, taken one after the other in the absence of any police officer (witness Nos. 18, 19 and 20). The finding of the property as above detailed, was clearly proved on the trial by witness, No. 2, the cloth-merchant and witnesses, Nos. 21, 22 and 23, inhabitants of prisoner's village, and 24, the darogah. All the cloth being new, they could not point out what particular pieces were produced by each prisoner, but their evidence is consistent and distinct as to each prisoner producing a quantity of cloth, as his share of the robbery, as well as to the fact that no violence or fraud was used by the police. The property was also identified by the owner and his witnesses who recognized it principally by the trademarks on the cloth, which were those used by Gourkishore.

Beesha, the servant, was tendered a pardon by the magistrate, on condition of telling all he knew, which offer he accepted, and his name was inserted among the witnesses in the calendar,

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but on taking his deposition without oath, I found that he entirely contradicted both his confession and deposition before the joint-magistrate, asserting that the whole case was got up by his master in order to punish the prisoners, with whom he had a quarrel, I consequently annulled the pardon as he had not fulfilled the conditions on which it was tendered, and remanded him to the magistrate for commitment.

The prisoners deny their guilt and repudiate their confessions, but they are unable to make any consistent defence, and the witnesses they have summoned prove nothing.

The law officer convicted on full legal proof, Nos. 13 and 15 of highway robbery, and Nos. 14, 16 and 17, of possessing property knowing it to have been obtained by the said robbery, and I concurred and sentenced the prisoners as mentioned below.

Sentence passed by the lower court.—To be imprisoned with labor and irons, Nos. 13 and 15 for five (5) years each and Nos. 14, 16 and 17 for three (3) years each.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The recovery of the stolen property, from the prisoners, is strongly corroborative of their confessions, and is much in favor of their being voluntarily given.

We reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND DIAL AHIR,

versus

SURDAR SINGH (No. 1,) JANKEY RAI (No. 2,) RUGBAR RAI (No. 3,) AUCHAIBUR RAI (No. 4,) SAUDOGUR RAI (No. 5,) JAIGOPAUL SINGH (No. 7,) KITA RAI (No. 8,) TILOKEE KUHAR (No. 9,) AND RADHA SINGH (No. 10.)

Sarun. 1854. August 31. Case of SURDAR SINGH and others.

Conviction and sentence passed by the sessions judge in a case of riot, attended with culpable homicide, upheld in appeal.

CRIME CHARGED.—Riot attended with the culpable homicide of Surubdawun Singh, and severe wounding of Dial Ahir.

CRIME ESTABLISHED.—Accomplices in the crime charged.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 12th June, 1854.

Remarks by the officiating sessions judge.—This case has originated in a dispute for crops which Dial plaintiff and the deceased, belonging to mouzah Puharee Chuk and Nuzzur Meerah,

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were cutting, when they were attacked by the defendants and many others belonging to Sahpore, Sampore, Audun and Buhutta who claimed the crops as belonging to Sahpore. The darogah thought there had been an affray between the defendants and some of the people of Nuzzur Meerah and Puharee Chuk, but I think the magistrate has rightly committed the defendants alone. There appears to have been first of all a dispute between a few of the villagers, when notice was sent to Sahpore which resulted in the attack on the plaintiff and the deceased. There is ample proof against all but one of the parties committed by the magistrate, and there can be no doubt from the evidence of witnesses Nos. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13 and 14, that the deceased Surrubdawun Singh received the injuries proved by the evidence of the civil surgeon to have caused his death from the hands of defendant No. 1 Surdar Singh, and defendant No. 7 Jaigopaul Singh, the former having used his *ghurassa* and the latter his sword. Dial the plaintiff likewise received two sword-cuts, and will never recover the full use of his arm, but the person who inflicted these wounds died after his apprehension. The rest of the defendants Nos. 2, 3, 4, 5, 8, 9 and 10, are also clearly proved, by the evidence of either the whole or nearly the whole of the abovementioned witnesses, to have been present and to have used their *lattees*, some against the plaintiff and others against the deceased. The defendants deny the charge, Nos. 1, 2, 3, 8, 9 and 10, plead an *alibi*, but this defence quite fails. Nos. 4 and 5 admit having been near the spot while No. 7 himself bears marks of blows from a *lattee*, which he states were inflicted by the people of Puharee Chuk and Nuzzur Meerah. The moulvee convicts the prisoners of being accomplices in the crime charged, and I sentence them as noted below. I punish Surdar Singh and Jaigopaul Singh much more severely than the rest, because these two deliberately used weapons, a sword and a *ghurassa*, like battle-axe, which are pretty sure to cause death or severe wounding or maiming, and outrages of this description are so common in this part of the country, that the people must be taught that a severe punishment will be awarded to those who use weapons which pretty surely lead to a loss of life, though the actual taking of life may not be contemplated by them.

Sentence passed by the lower court.—Nos. 1 and 7, each to be imprisoned for a period of seven (7) years with labor in irons from the 12th June, 1854. Nos. 2, 3, 4, 9 and 10, each to be imprisoned for a period of three (3) years from ditto without irons, and each to pay a fine of one hundred (100) rupees on, or before the 11th July next, or in default of payment, to labor until the fine be paid, or the term of their sentence expire. No. 8, ditto ditto for eighteen months ditto and to pay a fine of twenty-five (25) rupees ditto ditto, and No. 5 ditto ditto one (1) year ditto ditto ditto twenty (20) rupees ditto ditto.

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Case of SURDAR SINGH and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Mr. Colebrooke appeared for the prisoners Nos. 1, 2, 3, 4, 7 and 10 and was heard to-day in their defence. He admitted that there was strong direct evidence against his clients, but pointed out that some of the witnesses had described the weapon used by No. 1, to have been a *ghurassa*, while others stated it to be a *lohabundee*, he also referred to the *alibi* pleaded by No. 10, and the evidence adduced, in support of it.

We find there is the direct evidence of several eye-witnesses on record, by whom the prisoners were well known. These witnesses speak positively to the presence of the prisoners at the riot and to their complicity therein; we see nothing like material discrepancies in the evidence to lead us to doubt the discretion of the judge, who tried the case and relied upon it, and deeming it therefore sufficient to prove the guilt of the prisoners who have appealed, we see no reason for any interference with the sentence passed upon them and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MOHUNLAL (No. 1,) BYJOO SINGH (No. 2,) CHUMMUN SINGH* (No. 3,) GUNPUT KAHAR* (No. 4,) KUNHYALAL* (No. 5,) HURDEO SINGH (No. 6,) BULDEO SINGH* (No. 7,) AND DURROO* (No. 8.)

Behar.

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Case of MOHUNLAL and others.

In an affray at Gyah in which the two principals were said to be rival Mohunts, each trying to get hold of a rich pilgrim, the two principals thus charged were acquitted,

CRIME CHARGED.—Nos. 1 to 8; 1st count, affray attended with culpable homicide of Deenonath deceased, and with severe wounding of Hurdeo Singh; Nos. 1 and 5, 1st count, principals in the above affray; 2nd count, causing the above affray; No. 2, 2nd count, severely wounding with a sword Hurdeo Singh prisoner; No. 6, 2nd count, culpable homicide of Deenonath deceased.

CRIME ESTABLISHED.—The 2nd count, on prisoners Nos. 1 and 5; and 1st count, on prisoners Nos. 2 and 6.

Committing Officer.—Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 14th June, 1854.

Remarks by the sessions judge.—A Gywal or priest of Gya is in the habit of meeting his pilgrims, especially the more wealthy

* Acquitted by the lower court.

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but their followers were convicted of affray with culpable homicide. A sessions judge having convicted and sentenced a prisoner on trial before him is not competent to release him on bail during his appeal to the Sudder Court.

ones, who select him beforehand on the banks of the Pon Pon, where certain ceremonies commence. The pilgrim is brought to the Gywal by his emissaries, who, as travellers, go about armed and ransack India for customers for him, as without these gentle and persevering reminders, it is possible the practice of pilgrimage might not only decay, but through continued neglect in the course of time, might wear itself out. A Gywal thus retains large bands of servants for such purposes, many of whom are but very loose and indifferent characters, and as may be noticed in the present case, Musulmans as well as Hindoos whom such habits cannot tend to improve. Heretofore it had been a well recognized rule that one Gywal could not interfere with another's pilgrim, but of late years, since the Government disconnection, discord has crept into the priesthood, the general Punchaitee is no longer obeyed. Feuds and independent factions have arisen. Might has grown into right, and both servants and pilgrims are enticed away, unless each priest can by force or individual influence maintain his own. Very promising elements of public disturbance and demoralization for this place, unless vigilantly watched and checked, and in every instance of violent breach of peace, which are now becoming more frequent, exemplarily punished, that is, if our police and courts of justice are capable of coping against such influences, which then assuming, as in the present case, the force of false-swearing within the court as it does brute force out of court, will do its best to defeat the ends of justice within its own threshold, by the very same tools when justice may, in vain, look elsewhere for better evidence of such occurrences.

Govind Ram's evidence before the magistrate, 13th April last, No. 135. The evidence generally in both sides as well as Kunhyalal's and Hurdeo's admissions.

Of the two parties in the present case Byjoo, Chummun, and Gunput and the deceased were Mohunlal Gywal prisoner No. 1's servants and Hurdeo Singh, Bulldeo Singh, and Durroo bhistee prisoners Nos. 6, 7 and 8, Kunhyalal Pathuck Gywal prisoner No. 5. A wealthy pilgrim from Gwalior, one Govind Ram, had engaged himself to Mohunlal his family priest, and on approaching the Pon Pon with a host of followers, or an army of five to six hundred people, as the witnesses style them, early in the morning of 15th March last, voluntarily joined and accompanied Mohunlal who had gone out to meet him. Kunhyalal Pathuck had previously repeatedly attempted to entice away Govind Ram, through Hurdeo Singh, and had as invariably failed. It is placed beyond doubt by the statements on both sides that Hurdeo again shewed himself for the same purpose, when Govind Ram met and joined Mohunlal, as above shown, and which gave rise to the occurrence under trial.

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The story on Mohunlal's side is, that Byjoo and Hurdeo having exchanged abuse, the latter, acting under Kunhyalal's orders, drew his sword and was about to strike Byjoo Singh, when Heera Singh, another servant, acquitted by the magistrate, together with Gunput prisoner No. 4, endeavored to wrest the sword out of his hands, but were obliged to let go, in which it is pretended, Gunput got a slight scratch. Hurdeo was in the act of renewing the attack on Byjoo Singh, when his brother the deceased, rushing between them empty-handed, Hurdeo wounded him with his sword on both knees, and then went off towards the police chowkee of Deyoohra close by, where the police jemadar and burkundazes had turned out, it is said on Toofanee Dosadh's (witness No. 5,'s) alarm, and were at last bestirring themselves, and who apprehended Hurdeo coming towards them with a naked sword in his hand, and shewing wounds on his person. The two last proceeded onwards towards the bridge, where the occurrence had taken place, and there found the deceased lying wounded whom they brought to the chowkee, where they observed the jemadar had in the interim apprehended Mohunlal, who they heard had been attacked at the chowkee by Baldeo Singh and Durroo bhistee, the former of whom aimed his sword at Mohunlal's foot, as he sat on his elephant, and the latter levelled his carbine at him, when both were disarmed by the jemadar, some one or other of their party, however running off with their arms in the most unaccountable way.

Witness No. 1, Rampershad.
3, Anund Row.
14, Munnoo Koormee.
15, Choolum Kahar.
16, Hossein Bux.
22, Moheshur Singh.

Witness No. 5, Toofanee Dosadh.
" " 6, Abdool Burkundaz.
" " 7, Khodabux.

Witness No. 1, Rampershad,
3, Anund Row.
14, Munnoo.
15, Choolun.
16, Hossein Bux.
22, Moheshur Singh.

The story on Kunhyalal's side is, that on the exchange of abuse, Mohunlal ordered Hurdeo to be beaten, when both Byjoo and the deceased wounded him with their swords.

Witness No. 36, Dookhun Singh.
" " 46, Barkhar.
" " 47, Lalkhan.
" " 48, Ameer Ally.

The deceased's person shewed "two severe wounds of an incised nature across both knees. The wound on the right knee was of a frighful nature, laying the kneepan completely open and penetrating, to a considerable depth, the lower end of thigh bone and upper end of the bone of the leg. That on the other leg exposed the inner side of the knee joint. He died from the effects of these wounds on 15th April last, with but little chance

Witness, No. 10, Dr. Diaper.

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of his life from the first." Dr. Diaper was of opinion that "from the wound on the right knee being so entirely different in direction and situation (oblique and inside) from that on the left, (horizontal and in front) it is impossible that they could both have been inflicted at the same time." He was of opinion that the wound on the right knee was inflicted by a man standing in front and cutting downwards, and he cannot form any satisfactory idea as to how the right knee was wounded. Hurdeo's wounds were superficial incised ones of trifling nature and extent. "One on the left temple about half inch long. An oblique superficial incised wound on the palm or aspect of each of the fingers of the left hand, as if the man had closed his hand upon some sharp cutting instrument. A superficial incised wound on the left shoulder about one inch long." The one on the left temple is said to have been inflicted after cutting through his turban.

Each side from the first have alleged that the wounded man's wounds of the opposite side were self-inflicted, and on Hurdeo's side, a most ridiculous story is got up, supported by witnesses, as to the deceased's having been wounded by Gunput Kahar on Mohunlal's order.

Witness No. 46, Barkhan.
,, ,, 47, Lalkhan.
,, ,, 48, Ameer Ally.

Both Mohunlal Gywal and Kunhyalal, Pathuck Gywal plead "*not guilty*" the first, complaining of the partiality of the police in the first instance, and the second asking, if guilty, how the police had failed to apprehend him on the spot, where he had continued until the following day. He delivered himself up to the magistrate on the 27th March last; Mohunlal pretends that he had passed onwards with his pilgrim Gobind Ram prior to the occurrence and had reached the banks of the Pon Pon, when apprehended and brought back to the chowkee by the police. In this case, he must have already passed the chowkee in the first instance unchallenged. Kunhyalal declares he was asleep in his tent on the banks of the Pon Pon, ignorant of what was happening.

Witness No. 23, Bedlal.
,, ,, 24, Kurmalli.
,, ,, 26, Oomrow Singh.

Witness No. 28, Sheewa Doobey.
,, ,, 29, Ramdial Singh.
,, ,, 31, Nurban Singh.
,, ,, 32, Huree Kahar.
,, ,, 34, Bukhooree Doobey.

The jurors are unanimous in convicting all the prisoners, except Mohunlal and Kunhyalal, of affray attended with culpable homicide of Deenonath and severe wounding of Hurdeo and whilst the two last convict Mohunlal and Kunhyalal as principals therein, the two former acquit them.

Sree Kissen Pathuck Gywal, Damoodur Barnick Gywal, Moulvee Syad Koorsheedally *vakeel* of P. S. Ameen's Court, Moulvee Ikbalalee *vakeel* of S. A.'s Court.

As usual in cases of this kind, there is no really disinterested evidence on either side, and although the magistrate seems satis-

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fied that the police jemadar's intervention stayed matters from proceeding to greater extremities, neither his activity nor impartiality seems very apparent. The police never appeared until the disturbance was over, and though located on the spot and every thing happening within sight of his station, the jemadar failed to apprehend Kunhyalal Pathuck as he did Mohunlal, or report his having rescued Mohunlal from the alleged attack made on him by Baldeo Singh and Durroo bhistee in front of his chowkee, and in his presence, although recorded by him in Mohunlal's original defence of 15th March, No. 27. He appears to be an illiterate person. The darogah completed the local inquiry. A set tale seems to have been adopted on each side from the first as quietly endorsed by the police, and as obstinately adhered to, on both sides to the last. The four eye-witnesses are nominally brought forward as disinterested persons, but a reference to their evidence, either before the magistrate or this court, will sufficiently show that they are as much Mohunlal's partizans as any of the witnesses cited by himself, and therefore Narain Bhut's and

Witness No. Rampershad Doobey.
Nurain Bhut.
Anund Row and
4, Bhojraj Rajpoot.

Bhojraj's absence before this court is in reality no loss. In such a case it is vain to expect that the real facts in detail are to be elicited. If, according to Mohunlal's side, the deceased had interposed unarmed to save his brother Byjoo himself armed and uninjured to the last, whilst Hurdeo was attacking Byjoo with a drawn sword, it is singular how the deceased came by two such distinct sword-cuts across both knees, the rest of his body being untouched. If maliciously aimed at such parts, notwithstanding the crowd and confusion of the moment, the circumstances attending such an act must have been too marked to have escaped the observation of the witnesses if they really were, as they all depose to be, close to the deceased at the time, and yet not one of them could explain naturally how it had happened, or venture beyond the set tale learnt by heart. In like manner they are not only contradictory, but there was no ascertaining from them the manner of the two brothers meeting that morning, or how Byjoo being armed with a sword the deceased happened to be without one, and which is not in keeping with the deceased's own statements. He told the police he was stationed on the bridge by Mohunlal to see that no one interfered with his pilgrims, and he repeated much the same statement to the magistrate. It is not credible that either Byjoo, or the deceased would have been employed on such duty unarmed, forewarned as they must have been of Kunhyalal's and Hurdeo's presence on the spot, and their prior attempts to tamper with the pilgrims then arriving. The deceased's severe wounds not one, but distinctly two, look too natural to have been inflicted by

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any of his own party, whilst the account given of it by the within witnesses is a palpable concoction. Noting especially the wound on the right knee "cut downwards," the natural inference is, that the deceased came by these wounds, whilst successfully guarding the rest of his person in mutual combat. It is therefore impossible to accept the evidence of either side in detail, but the main facts are essentially established by the statements and evidences on both sides to the extent that a quarrel commencing between Hurdeo and Byjoo, swords were drawn on both sides by which Hurdeo was slightly, and the deceased so dangerously wounded, as to cause his death.

Witness No. 46, Barkhan.
,, ,, 47, Lalkhan.
,, ,, 48, Ameer Ally.

In concurrence with the verdict of the jury, I accordingly convict Byjoo prisoner No. 2, and Hurdeo prisoner No. 6 of affray attended with the culpable homicide of Deenonath deceased and with wounding Hurdeo Singh, but for the very same reasons, in dissent with their verdict, I acquit Chummun prisoner No. 3, Gunput prisoner No. 4, Baldeo prisoner No. 7 and Durroo bhistee prisoner No. 8, and they have been released accordingly.

Besides Chummun Singh and Gunput Kahar have been implicated in no greater degree than Heera Singh, who was acquitted by the magistrate, and I view the accusation against Baldeo Singh, and Durroo bhistee as plainly trumped up, and intrinsically absurd in itself whether as regards Baldeo Singh's sword falling harmlessly or Durroo bhistee's carabine missing fire.

Where the evidence is so tainted on both sides, I cannot rest the conviction of Mohunlal and Kunhyalal as principals in the affray solely on such worthless testimony, but at the same time the circumstances of the case, as affecting both, are peculiar. Kunhyalal's attempts to tamper with Mohunlal's pilgrim Govind Ram, through Hurdeo, previous to, and up to the day of the occurrence which it doubtless caused, is established by the evidences and admissions generally on both sides, equally as they prove the aggression to have been wilfully premeditated, and persevered in both by Kunhyalal and Hurdeo, for it is impossible to separate the two in the face of Govind Ram's repeated rejections and which Kunhyalal has never even attempted to disprove. Both principals thus pre-acquainted of their quarrel, for it is impossible Mohunlal could have remained ignorant of his pilgrim's repeated rejections of Kunhyalal, or the order he gave to the deceased to prevent tampering with his pilgrims is without meaning, have acted with perfect indifference as to results, which both have sought to maintain by violence in regard of interests that alone concern each personally. Beyond doubt both were present on the spot, and neither did any thing to prevent what happened, as will best appear, by asking what kind of spot this was. It has been elicited from the witnesses on

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both sides that both Mohunlal and Kunhyalal had been encamped, for several days previous to the occurrence, by the road side on the banks of the Pon Pon, and that neither before, or at the time, did either take any precautions to prevent it. The approach of a pilgrim like Govind Ram, as the witnesses style him "with an army" could not have taken place without each party being aware of it several days beforehand as peeps out in Mohunlal's precautions to protect his pilgrims, and Hurdeo's attempt to interfere with them, and it must have been just as well known to the police, whose pretended alarm through Toofanee Dosadh, witness No. 5, is but a sorry make-shift. Each of the three parties plainly allowed things to take their own course. Down to the banks of the Pon Pon, towards which the pilgrims were travelling, runs the straight high road. Half way stands the police chowkee of Deyoohra, where the jemadar and burkundazes were stationed, and at the other end the bridge which crosses the road, and where, as acknowledged on both sides, the fighting took place and where the deceased was found by the burkundazes lying wounded. In the map this bridge is stated to be only five *russees* distant from the chowkee. At all events, this bridge is within sight from the Pon Pon itself, and under the questionable evidences on both sides, it is quite unnecessary to decide whether Mohunlal and Kunhyalal were on the road or off the road, or as acknowledged in their encampments at the Pon Pon on the road side, at the time of the occurrence, which, under the circumstances stated, was thus necessarily taking place with their cognizance and within their sight. Kunhyalal's defence as to his having been asleep at the time is as incredible as the evidence brought to prop it up, and which besides has been sufficiently shaken under cross-examination. It has been ruled: "That it has been very well laid down, where a party is sufficiently near to lend assistance to the party being injured and willingly risks the consequences by neglecting to interfere and the injured person dies, he is chargeable with the offence of being a principal in the second degree." These two masters therefore not only neglected to interfere between their own servants, but the presumption is strong that they were fighting, with deadly weapons, their own personal quarrels through them as their own hirelings entertained for that very purpose.

I so far agree therefore with the convicting-jurors as to convict Mohunlal, prisoner No. 1, and Kunhyalal, prisoner No. 5, on the 2nd count, "of causing the said affray." I have sentenced all the prisoners as within, according to the judgment arrived at under the foregoing remarks with regard to their respective degrees of guilt. The aggression on Kunhyalal's side was most wilful and daring, as is best bespoken by the character of his hireling Hurdeo, who by his bearing and acts is evidently a first rate qualified bully and appears to have been specially entertained for the occasion as a Gwalior man.

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N. B.—The two Gywals appealed from the sentence and have been held to bail, after issue of warrant as reported to the Court in my letter No. 113,* dated 15th June, 1854, since reversed as per Court's resolution† No. 613, dated 30th June 1854, which has been duly carried into effect.

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* From the sessions judge of Behar to the register of the court of Nizamut Adawlut, No. 113, dated 15th June, 1854.

In a sessions trial, on the 14th instant, two Gywals, Mohunlal Bhya, and Kunhyalal Pathuck were convicted by me of "causing an affray" attended with culpable homicide of Deenonath deceased on the one side, and with the wounding of Hurdeo Singh on the other, both of sword wounds. The jury noted in the margin,* sat on the trial. The two first convicted the above named as principals in the above affray, but the two latter acquitted both, convicting however all the other prisoners, the retainers of both sides. I convicted, as above shewn and sentenced the above named conformably to Cons. 783, 25th March, 1833, page 96, volume II. Sentencing the former to two years and the latter to five years' imprisonment, the warrants having been duly issued.

* Moulvee Syed Khoorshed Alli, *vakeel* of principal *sudder* ameen's court.
Moulvee Ikbal Alli, *vakeel* of *sudder* ameen's court.
Sreekisson Pathuck Gywal.
Dumoder Barnick, ditto.

Both persons have to-day filed appeals against this sentence, at the same time praying that they may be permitted to remain at large on whatever amount bail may be demanded, pending the issue of their appeals.

I have felt some difficulty in disposing of this application, since according to the practice in force, it solely rests with the appellate authority to stay a sentence pending appeal. But in the ordinary course of submitting the sentence appealed against to the superior Court, several days must necessarily intervene, before appellants could obtain such remedy and their intermediate incarceration, especially if their appeal should be eventually successful, could answer no good purpose. With regard, therefore, to the nature of the crime of which they stand convicted by me, under a conflicting verdict by the jury, and the nature of the Court's remarks dated 12th April, 1833, appended to the Construction above cited, I have taken upon myself to direct the magistrate to stay further execution of my warrant as regards the appellants and to enlarge them on ample bail* pending the result of this reference, and my obtaining the Court's instructions herewith solicited, for my better guidance in this and in all similar instances for the future.

* They stood committed to sessions trial on bail.

† Resolution of the Nizamut Adawlut, (Present: Sir R. Barlow, Bart.,) No. 613, dated 30th June, 1854.

The Court observe that the sessions judge had full authority to convict, and the decision by clause 2, section 4, Regulation VI. 1832, is vested *exclusively in himself*. But in the case under reference, his opinion was also supported by two out of four jurymen, the conflicting verdict cannot therefore affect the conviction.

The powers of a sessions judge, in admitting to bail after trial, are laid down in section 7, Regulation XIV. 1810, whereby he can, if for *acquittal* against the *futwa* for conviction, hold a party to bail. The case there contemplated is one referrible to the Nizamut Adawlut, this is one which the sessions jndge is competent to dispose of himself, moreover, in this the sessions judge is for conviction not for acquittal.

Under the above circumstances, the Court reverse the sessions judge's order, directing the magistrate to take bail.

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Sentence passed by the lower court.—To be imprisoned without irons, Nos. 1 and 2, for two years each and to pay a fine; No. 1, of 500 Rs. and No. 2, of 50 Rs. on or before the 14th July, 1854, or in default of payment, to labor until the fine be paid or term of sentence expire, and No. 5, for five years and No. 6, for seven years both with labor and irons all from the 14th June, 1854, the others being acquitted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Mr. J. G. Waller, Baboo Kissen Kishore Ghose, Moonshee Ameer Alee and Moulvee Murhumut Hossein appeared on the part of the several appellants, prisoners, in this case, and Baboo Sumbhoonath Pundit in support of the conviction.

After perusing the proceedings on record and well considering all the arguments advanced by the pleaders, regarding the insufficiency of the evidence to connect the principals with the quarrel and affray, which it is admitted took place between some of their adherents, we think the judge has taken an exaggerated view of the case altogether and has quite misapprehended the exciting causes which led to this affray and the homicide of Deenonauth.

The evidence, as before us, proves, beyond doubt, that Hurdeo Singh and Byjoo quarrelled and fought with swords, and that Deenonauth in the endeavour to aid his brother Byjoo, received wounds which afterwards proved fatal.

The conviction of these two prisoners is fully warranted by the evidence and must be upheld, and the punishment awarded to each is, under the circumstances, appropriate and just. But we cannot agree with the sessions judge that there are any grounds for convicting Mohunlal and Kunhyalal of having caused this affray.

The proof of their guilt, according to the sessions judge's remarks on the trial, seems to be derived from circumstances which will not fairly bear such a construction. It is alleged that great jealousy and party spirit existed between these two priests, which was participated in, by their followers; and that the object of each at that particular time was to secure the adherence of Govind Ram; that as Govind Ram's approach was well known and expected and the affray happened on the spot where it did, the principals must have been the instigators and passive spectators of the fight between their retainers. But as far as the evidence allows us to judge, we are of opinion that the *overt* acts of the prisoners Hurdeo and Byjoo are far more readily and reasonably accounted for, by the occurrences which took place on the spot, and which must have followed each other in such rapid succession, that it is impossible to suppose the result was premeditated, nor can it be regarded as attaching guilt to any but those actually engaged in them.

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The simple facts appear to be, that Govind Ram's adherence to Mohunlal's party induced his follower Byjoo to jeer at Hurdeo, for his unsuccessful attempts to prevent it, and that Hurdeo, nettled at the taunts, and in no humour to curb his anger, proceeded at once to attack Byjoo, who drew his sword to assist him: a fight then ensued in which Deenonath joined to aid his brother Byjoo, but the assault proceeded no further.

This would not have been the case had the attack been instigated by the principals, for it is only reasonable to suppose that in that case more of the retainers on both sides would have taken part in it. It moreover appears that when these occurrences happened, Mohunlal who came out to meet Govind Ram, had passed on to his encampment, and Kunhyalal did not make his appearance till afterwards.

We entirely acquit these two last of any complicity in the acts of the two other prisoners, who, we also believe, acted on the spur of the moment and had met without any premeditated purpose of assaulting each other.

Mohunlal and Kunhyalal must be released, and the sentence of the sessions judge carried out against the other two prisoners.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS.,

GOVERNMENT AND LEHAZOODIN,

versus

MUSST. ALUCK JAN.

Backergunge.

1854.

September 1.

Case of MUSST. ALUCK JAN.

The prisoner was acquitted notwithstanding her confession before the magistrate, the truth of which, with reference to the circumstances of the case, was disbelieved by the Court.

CRIME CHARGED.—1st count, burglary, in which property to the value of Co.'s Rs. 2,350-10, was carried off; 2nd count, knowingly and wilfully receiving,and keeping the stolen property.

CRIME ESTABLISHED.—Burglary.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 9th June, 1854.

Remarks by the sessions judge.—The prisoner was the *nickka* wife of the prosecutor, turned off by him for alleged misbehaviour, eight days before the occurrence of the burglary.

The prosecutor was absent, but being told of the circumstance, went home and learning what had happened, lodged a complaint before the police, to whom he mentioned that Fuckeer Mahomed, his sister's foster son, might be the thief, as he was aware in what part of the house the valuables were deposited.

On the apprehension of the person, he informed the police that the prisoner had spoken to him two days previously on the subject of aiding her in committing a burglary in the prosecutor's house.

This led to the apprehension of the prisoner, who made a full confession of her guilt,* and pointed out a considerable quantity of the stolen property secreted in various out-of-the-way places.

She confessed also before the magistrate. This has been verified by the attesting witnesses.†

The evidence‡ proves that a burglary was committed; that§ the property recovered belongs to the prosecutor, and was carried off on that occasion; that|| it was pointed out by the prisoner in places, where no one, but the prisoner, who deposited it, could have found it.

* Witness No 1, Rum Jan Ally.
,, ,, 2, Emamoodin.
,, ,, 3, Tarinee Churn Dass.

† Witness No. 4, Oomer Duroz.
,, ,, 5, Kishen Gobind Sircar.
,, ,, 6, Fussioodin Mahomed.

‡ Witness No. 2, Emamoodin.
,, ,, 3, Tarinee Churn.
,, ,, 9, Lall Gazee.
,, ,, 12, Zuheeroodin.

§ ,, ,, 9, Lall Gazee.
,, ,, 10, Sadoo Khan.
,, ,, 2, Emamoodin and
,, ,, 11, Mahomed Sullim.

|| ,, ,, 7, Puthoo Khan.
,, ,, 8, Sultan.
,, ,, 3, Tarinee Churn Dass.

1854.

September 1.

Case of Musst. Aluck Jam.

The prisoner's defence at the sessions is, that the property is hers, and that she carried it away with her, when she left the prosecutor's house. Her witnesses, however, know nothing of this matter.

The jury found the prisoner guilty, and she was accordingly sentenced.

Sentence passed by the lower court.—To be imprisoned for three years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court observe that the sole evidence against the prisoner is her confessions, at the thannah and before the magistrate, and the finding of certain articles of jewellery with her, and of domestic utensils in a jungle. The deposition of the prosecutor and the confessions cannot be credited. The prisoner states in her confessions that an adopted son of her husband's sister enticed her to commit the theft; that he cut the hole with a *sickle* in the wall, through which he desired her to enter with the *sickle*, which she did, and in the dark, dug two holes with the said *sickle* in the floor of the apartment and carried off the money, jewels, utensils, &c., herself. The prosecutor deposes that 2,101 Rs. in cash were stolen, besides all the other things. It is impossible that a woman like the prisoner could have carried away the 2,101 Rs. and other things recovered, which weigh above eleven seers.

Independent of the above, prosecutor has claimed, as part of the stolen property, seventeen articles not in his list. Therefore, not satisfied with the evidence for the prosecution, the Court acquit the prisoner and order her release.

PRESENT:

24-Pergunnahs.

A. DICK, AND B. J. COLVIN, ESQS., *Judges*

1854.

September 1.

Case of Isherchunder Ghose.

The prisoner's appeal was rejected.

Mistake of the sessions judge, as to the verdict of the assessors, noticed.

GOVERNMENT,

versus

ISHERCHUNDER GHOSE.

CRIME CHARGED.—Perjury in having, on the 19th November, 1853, corresponding with 5th Ugrahun 1260 B. S., intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the magistrate of Howrah, that he knew Bhootnath Chatterjee and Seetaram Dutt, the defendants, Nos. 1 and 3, in the calendar No. 3, for November 1853, and that they resided with Isherchunder Banerjea, and in having, on the 20th December, 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the additional sessions judge of zillah 24-pergun-

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nahs, that he knew Seetaram Dutt and that he resided with Isherchunder Banerjea, but did not know Bhootnath Chatterjee, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. S. Torrens, sessions judge of 24-pergunnahs, on the 3rd May, 1854.

Remarks by the sessions judge.—This case was tried by me with the aid of assessors. The prisoner is committed for perjury in a dacoity case, tried by the additional sessions judge, on the 21st December* last. In this case, one of the prisoners, No. 8, Isherchunder Banerjea, was charged as accessary in the dacoity, and another, his servant Bhootnath, was charged as principal. The prisoner in his examination before the magistrate distinctly stated that he knew the dacoit, Bhootnath, and that he resided in the house of Isherchunder Banerjea. In his examination before the additional sessions judge, he swore that he did not know him. On his being made over to the magistrate for the perjury, he admitted that he swore falsely before the sessions, but pleaded that he had been influenced in this course by fear. Before the sessions, he pleads *not guilty*. The assessors acquit him of perjury. I dissent from this, and find him clearly guilty. It was important on the trial before the additional sessions judge to determine whether the dacoit, Bhootnath, was in the employ of Ishurchunder Ghose or not. The prisoner, it is clear, knowing this to be the case, and that it would be favorable to the prisoner, Ishur, to show that Bhootnath had no connection with him, deposed falsely to the question put to him on the subject. The plea of fear is, I conceive, not admissible in justification, and I sentence him to imprisonment with labor and irons for three years.

* Calendar No. 2, for November 1853.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court see no reason for interference, the perjury and proof of it being both clear.

They observe, however, that the sessions judge, in this abstract, has recorded that the assessors acquitted the prisioner, whereas it appears on perusal of their verdict, that both of them found him guilty and the sessions judge, in passing sentence, stated he concurred with them.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

SHEIKH KOOLOO.

Dacca.

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Case of SHEIKH KOOLOO.

The prisoner's appeal was rejected on the strength of his confession before the magistrate. He urged also a new plea in appeal.

CRIME CHARGED.—Committing a burglary in the house of plaintiff by cutting the mat, and stealing therefrom property to the value of Rs. 29-13-6; 2nd count, having in his possession property, knowing it to have been acquired by the above theft.

CRIME ESTABLISHED.—Being an accomplice to a burglary in the house of the plaintiff, and having in his possession property, knowing it to have been acquired by the above burglary.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 20th May, 1854.

Remarks by the sessions judge.—The prosecutrix stated that her house had been broken open and the property stolen, which last was found on search in the prisoner's house.

The property was recognized as that of prosecutrix's.

The prisoner confessed in the mofussil and in the magistrate's court. Here he pleaded *not guilty*, complained of ill-treatment and examined a few witnesses,* who said he was respectable, though those he had previously called in the magistrate's court said nothing in his favor.

* Nos. 22 and 23.

I convict the prisoner, on his own confession, of being an accomplice in the burglary and also on the second count, but although there may be suspicion, there is no proof of the magistrate's statement, that the prisoner is part of an organized gang of burglars.

The witnesses, present at the search of the prisoner's house, depose that the burkundaz went in and produced the property, saying he had found it in some rice, that they, the witnesses, did not see the property at the time it was discovered, but merely heard the burkundaz say he had found it. If such a practice exists in the zillah, it should at once be checked. Had the prisoner not confessed in this instance, he must have been acquitted. Such a mode of search for and discovery of stolen property is not of itself sufficient evidence of possession. The magistrate's attention will be called to clause 6, section 16, Regulation XX. of 1817.

Sentence passed by the lower court.—To be imprisoned for the period of two (2) years and two (2) years in lieu of stripes, total four years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The prisoner confessed before the magistrate, and there is nothing to shew that confession was not voluntarily made, or that it is otherwise than a true statement.

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The plea that he urges in his petition of appeal, of inability to commit the crime charged against him from sickness, is only set forth in it for the first time, and was not pleaded before. In his confession he also admitted having got the articles which were recovered from the house. We therefore reject the appeal.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

TRIAL NO. 5.
GOVERNMENT AND SHEIKH GOLAM ALLY,

versus

SHEIKH SADOO.

TRIAL NO. 6.
GOVERNMENT AND SHEIKH SAHEBJAN,

versus

SHEIKH SADOO (No. 5,) SHEIKH MATBUR (No. 6,) AND SHEIKH OOZEER* BEPARY (No. 7.)

Dacca. 1854. September 1. Case of SHEIKH SADOO and another.

One prisoner acquitted, notwithstanding his confessions, before the police and magistrate, which were not deemed credible. The other prisoner acquitted for want of proof of guilt.

CRIME CHARGED.—*Trial No.* 5.—1st count, committing a burglary in the house of the plaintiff and stealing therefrom, in cash and goods, property to the value of Rs. 1,387-12; 2nd count, having in his possession property knowing it to have been acquired by the above theft.

Trial No. 6.—Prisoners Nos. 5 and 6, committing a burglary in the house of the plaintiff, and stealing therefrom in cash and goods, property to the value of Rs. 77-5; prisoner No. 6, 2nd count, receiving property knowing it to have been acquired by the above theft; 3rd count, privity to the above burglary.

CRIME ESTABLISHED.—*Trial No.* 5.—Being an accomplice to a burglary and theft in the house of the plaintiff, and having in his possession property knowing it to have been acquired by the above.

Trial No. 6.—Prisoner No. 5.—Being an accomplice to a burglary and theft in the house of the plaintiff; prisoner No. 6, having in his possession property, knowing it to have been acquired by burglary and theft.

* Acquitted by the lower court.

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Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 20th May, 1854.

Remarks by the sessions judge.—Trial No. 5.—The prosecutor, a *muhajun*, deposed that his house was entered by burglary at night on the 12th Kartick last, and a jar containing property, chiefly money, broken and the contents stolen. The prisoner having been apprehended on other charges, confessed his theft, and a *lota* the property of prosecutor was found in the prisoner's house.

The prisoner confessed at the thannah, and before the magistrate to participation in this and other thefts, and was also convicted in the case of Sahebjan prosecutor in case No. 6. In this court he pleaded *not guilty*.

Trial No. 6.—The prosecutor stated that his house had been broken open, and property to the value of Rs. 77-5 stolen, on the 10th April, 1853. On the apprehension of the prisoner Sadoo, some silver ornaments of prosecutor's were found on the search of Oozeer's (prisoner No. 7's) house.

The prisoner Sadoo confessed this with other thefts at the thannah, and before the magistrate. In this court he pleaded *not guilty*, and attributed his confessions to ill-treatment, but examined no witnesses.

Sheikh Matbur No. 6, pleaded *not guilty* throughout, claimed the ornaments as his own, and said he had pawned them to Oozeer (prisoner No. 7.)

Oozeer (prisoner No. 7) said, he had received the ornaments with others of the prisoner No. 6, in pawn for an advance of fifty rupees and proved this statement by witnesses.*

The prosecutor does not appear to have given intimation at the thannah of the theft, but that the crime was committed there is no doubt. He produced witnesses,† who declared the ornaments found to be his, and these ornaments are easily to be recognized by a defect in the silver. The prisoner Matbur also produced evidence‡ to shew the ornaments were his property, but his witnesses differed in some of their statements. One forgot what he had said in the foujdary, one differed as to why he accompanied the prisoner in his statement here, and in the magistrate's court, another, not a relation, could not say why the ornaments worn by the prisoner's wife, should have been so particularly shown him, and marks pointed out, and on my questioning the first witnesses examined, as to any quarrel or particular friendship between Matbur and Sadoo (Nos. 5 and 6,) to account for the latter having mentioned the other's name in

* Nos. 27, 35, 37 and 40.

† Nos. 11 and 15.

‡ Nos. 26, 27, 29, 35 and 36.

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his confession, these witnesses denied there was either, though all those last questioned, declared there was a quarrel, leaving a strong suspicion of collusion, or having been tutored by those first examined. I therefore disbelieve the evidence for the prisoner, and the more so, that many of the witnesses are also named by Kooloo the prisoner in case No. 7, as evidence for himself.

Sentence passed by the lower court.—Trials Nos. 5 *and* 6.—Prisoner No. 5, to a consolidated sentence of seven (7) years imprisonment and two years in lieu of stripes, total nine years with labor and irons.

Trial No. 6.—Prisoner No. 6, to be imprisoned for the period of two (2) years and one (1) year in lieu of stripes, total three (3) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.)

In Trial No. 5.—All the evidence against this prisoner, in this case, consists of his confessions at the thannah and before the magistrate, given in another case, in which he was acquitted! and the finding of a *lota* in his house.

The prisoner says, in this case, that those confessions were caused by ill-treatment at the thannah. On reading that confession in the other case taken before the magistrate, it is important to remark, that on being asked what he knew of *that* burglary, he at once answers with a long detail of *this* burglary! which was totally unconnected with that case, and concerning which no enquiry was being made.

The Court, not satisfied with the evidence against the prisoner, acquit him and order his release.

In Trial No. 6.—The only evidence against the prisoner Sadoo in this case is his confessions in another case, which the Court have rejected for the reason recorded in the former case No. 5, of this abstract.

The only evidence against the prisoner Matbur is the recognition, by prosecutor and two of his witnesses, of a pair of silver bracelets, pawned by prisoner with a person named Oozeer, who gave them up. It has been proved that they were openly pawned before witnesses, that Oozeer is a respectable, wealthy man in business, and three witnesses have testified to the bracelets having belonged to the wife of prisoner and were pawned with a number of other ornaments at the same time, and one of the three witnesses has identified them by the very same mark, as did one of prosecutor's witnesses. Moreover, prisoner has been proved, by the testimony of several witnesses, to be a man of good repute and in easy circumstances. Therefore the Court, dissatisfied with the evidence against the prisoners acquit both of them and order their release.

PRESENT:

J. DUNBAR, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND BHOLANATH BONDOPADDIA,

versus

SHIB CHUNDER DEB.

Jessore.

1854.

September 6.

Case of SHIB CHUNDER DEB.

The prisoner was acquitted upon the insufficiency of the evidence against him.

CRIME CHARGED.—1st count, burglary at the house of the prosecutor (Bholanath Bondopaddia,) during the night of the 27th May, 1854, corresponding with 15th Joisty 1261, and stealing therefrom property to the amount of Co.'s Rs. 602-12, and 2nd count, receiving some portions of the stolen property knowing it to have been obtained by burglary.

CRIME ESTABLISHED.—Receiving some portions of the stolen property, knowing it to have been obtained by burglary.

Committing Officer.—Mr. A. J. Jackson, joint-magistrate of Khoolnah, zillah Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 27th July, 1854.

Remarks by the sessions judge.—A burglary was committed in the house of plaintiff, and jewels and cash to the value of 600 rupees and upwards, were carried off.

After some days, plaintiff heard that Shib Chunder Deb, (whose brother has been for some time in jail under sentence for dacoity) as also one Tarachand and others were suspicious characters. Search was made and a bracelet (which has been duly identified by the silversmith* who made it and by inmates† of plaintiff's house as part of the plaintiff's property) and two burglarious instruments were found‡ in the prisoner's house.

* Witness No. 13, Dhonoonjoy Shornokar.
† ,, ,, 10, Chashenath Deb.
,, ,, 11, Ookoor Chunder Doss.
‡ ,, ,, 6, Sheta Gazee.
,, ,, 7, Shookoor Chowkeedar.
,, ,, 9, Ramtonoo Dhur.

He professed that the bracelet had been given to his daughter by her husband, witness No. 15, who denies the fact. Most of the witnesses for the defence are relatives of the prisoner, but they do not prove that the bracelet was given to the prisoner's daughter or that prisoner had any right to his married daughter's property.

The evidence given by the prisoner's wife, before the joint-magistrate, also makes against him. She was not sent in to the sessions as a witness for or against her husband.

The jury's verdict is *not guilty* of the 1st count, "guilty of the 2nd count;" concurring in this I convict the prisoner of receiving some portions of the stolen property, knowing it to

have been obtained by burglary and sentence him to three years' imprisonment with labor in irons.

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Case of SHIB CHUNDER DEB.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and B. J. Colvin.) It is quite proved that the husband of the daughter of the prisoner gave her a bracelet. Only one was found in his house, which the evidence does not so clearly establish to belong to the prosecutor, as that a conviction can safely rest upon the fact of finding it in the house of the prisoner. We therefore acquit him and direct his release.

PRESENT:

J. DUNBAR, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND KALA MUNDER,

versus

KULROO MUNDER (No. 1,) AND SIDHOO MUNDER, (No. 2.)

Bhaugulpore.

1854.

September 6.

Case of KULROO MUNDER and another.

The assault upon the deceased being sudden and unpremediated, one prisoner was sentenced only to transportation for life and the other, as guilty in a less degree, to imprisonment for ten years.

CRIME CHARGED.—Wilful murder of Choonee Munder deceased with a "*thonnee*" thick wooden post.

Committing Officer.—Mr. R. O. Heywood, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 10th August, 1854.

Remarks by the sessions judge.—Prisoners plead guilty.

The wall of complainant's house having fallen, he erected a mat screen. The prisoners, brothers, of thirty and twenty years of age respectively, his next door neighbours, took umbrage at this, and their conduct was such that complainant went to the zemindary cutcherry to represent the annoyance caused by it: while he was away, the prisoners began treading down his field of cucumbers, and his son Choonee deceased, attempting to prevent them, one, Sidhoo No. 2, seized him by the hair and held him down while the other, Kulroo, No. 1, taking a large stake forming one of the posts of the screen above alluded to, struck him on the head and fractured his skull, so that he died the same evening. The quarrel about the *tattee* or screen had been going on some time, and it appears more than probable, that the prisoners had used threatening language regarding it. The prisoners freely confess the seizure of deceased's hair by Sidhoo, and striking him down by Kulroo, with the weapon produced in court, by throwing however and not by striking. That the blow was struck however by Kulroo, wielding the heavy weapon with both hands, is fully borne out by the evidence before this

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court; witnesses Nos. 1, 2 and 3, all swear to the circumstances above detailed, and the medical evidence (Dr. Allen, No. 9,) goes to prove that the blow was a very heavy one, the weapon is a heavy rough stake, a branch of a mangoe tree nearly five feet long and weighing three seers, twelve and half chittacks (Bhaugulpore seer of one hundred sicca weight). The occurrence took place about seven in the morning, deceased was a hale man of thirty.

The prisoners' defence is, that the screen put up by Kala encroached on their rights, that they endeavored to remove it, when Choonee deceased, struck Kulroo and seized Sidhoo by the throat, when Kulroo took up the stake and threw it at Choonee. There is only one witness for the defence No. 18, whose evidence proves that the parties, Choonee deceased on one side and the prisoners Kulroo and Sidhoo on the other, were quarrelling very nearly as described by the evidence for the prosecution, this witness however did not see the trespass on the cucumber field described by the others.

The jury bring in a verdict of guilty of wilful murder against the prisoner Kulroo No. 1, and of being accomplice in the same against Sidhoo No. 2.

The only questions here are the amount of forethought and malice with which the blow was struck and the provocation, if any, which led to it, that it was struck with the hand, or rather both hands, is fully proved in evidence, as well as by the fact that the weapon is too heavy to wield in any other way, it is clear also that the prisoners were the aggressors from the beginning, there is no proof of deceased, or his younger brother Bechoo, a boy of seven or eight years old, who was also present, having given any provocation whatever beyond endeavoring to prevent their cucumber plants being trodden down; the crime without doubt amounts to wilful murder, one brother held the deceased down by the hair of his head, while the other fetched a bludgeon from close by and struck him.

The prisoners had a quarrel of some standing against complainant, who went to their landlord to represent their misconduct; during his absence they wilfully and maliciously injure his property, and, when opposed by his son for so doing, attack him together systematically, as it seems, one holding him down by the hair of his head while the other fetched a large heavy bludgeon from the fence close by and struck a blow, the consequences of which, could hardly be any thing but fatal. I convict the prisoner Kulroo of the wilful murder of Choonee, and Sidhoo of being his accomplice in the same as found by the jury, but with reference to the immediate quarrel being somewhat sudden, and the deadly weapon only accidentally at hand, would recommend that Kulroo be imprisoned for life with labor in irons in banishment, and that Sidhoo who very possibly did not suspect

his brother's extreme violence* be imprisoned for ten years with labor and irons.

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Case of KULROO MUNDER and another.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and B. J. Colvin.) We are not disposed to think that there was any thing systematic in the attack, upon the deceased, by the prisoners, as the judge supposes. The evidence shows sufficiently, that there was no plan, or consultation in regard to the assault. The deceased gave Sidhoo a shove, with a view to prevent him doing further mischief to the cucumbers, on which Sidhoo, seized him by the hair, and Kulroo, at once took up the stake and struck deceased heavily, when his brother had dragged his head downwards. Kulroo, could not but know, that in all probability such a blow must prove fatal, but it may well be, as the sessions judge remarks, that Sidhoo, was quite unprepared for such an exhibition of violence on the part of his brother. Concurring, therefore, in the conviction, and in the distinction which the sessions judge has drawn between the guilt of the two prisoners, we sentence Kulroo, to imprisonment for life in transportation, and Sidhoo, to imprisonment for ten years with labor in irons.

PRESENT:

J. DUNBAR, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND SYUD HUSSUN,

versus

BHEELOO (No. 6,) AND KURRUMOOLLAH (No. 7.)

Backergunge.

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Case of BHEELOO and another.

The Court see no reason to interfere with the finding and sentence.

CRIME CHARGED.—No. 6, wilful murder of Musst. Doollabee, No. 7, being an accessary after the fact of the above crime, on the 27th February, 1854.

CRIME ESTABLISHED.—No. 6, convicted of the culpable homicide of Musst. Doollabee and No. 7 ditto of being an accessary after the fact to the above crime.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 11th May, 1854.

Remarks by the sessions judge.—The prisoner, Bheeloo No. 6, is nephew of the prisoner, Kurrumoollah, No. 7. The deceased, Doollabee, was wife of the former. The chief witnesses are the two female relatives of the prisoners, witness No. 1, Foolja, is

* There is no evidence of the brothers having in any way premeditated the deed, or of their joint-agency in it being more than accidental.

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wife of prisoner, No. 7, and aunt to prisoner, No. 6, and witness No. 11, Myrunnee, is mother of prisoner, No. 6, and sister to prisoner, No. 7, Kurrumoollah.

The thannah deposition of these women was, that the deceased, whose age was about fourteen, was in the habit of running away from her husband's house, and that she did so on the 27th February last, during the early part of the day, when she was brought back towards evening by her brother. That as it got dark the prisoner, Bheeloo, and the deceased being together in the east shed, the former tied up his wife's hands, and with a wooden stool struck her five blows on her ribs. That while the prisoner was engaged beating his wife, the witnesses interceded for her, but to no effect, for the prisoner continued the blows till his wife fell down dead. The two prisoners then carried away the body.

In the foujdary, the witnesses give the same story, but neither of them allow that they saw the beating, the one was in the *verandah* of the very same house, and the other was in an adjoining shed close by. They also deny that they saw the body carried off.

Considering the relationship existing between the witnesses and the prisoners, it is very natural that they should desire to criminate the prisoners as little as possible. They have also learnt the effect that contradictory evidence has in favor of a prisoner, and have not failed to make their evidence as discrepant as they could, with due regard to their own safety.

The prisoner, No. 7, confessed, as soon as he was apprehended, to having aided the prisoner, No. 6, in the removing of the body; he took the darogah to the place where he said the body was thrown, which was from the prisoner's house a considerable distance off (two *dunds*) and inside a very heavy jungle. Having taken the darogah to a tree inside the jungle, a putrid odour pervaded the place, and on searching about, one entire piece of cloth was found, also the remnants of another bit together with some long hair attached to parts of a human scalp, and two human ribs.

The prisoner, No. 6, at first denied, but when he was about to be forwarded to the magistrate, he admitted that he had rebuked his wife for running away from him, and in order to teach her a lesson not to do it again, he struck her one blow with his open hand on her face, which killed her on the spot. After that, he says, he, unaided, carried the body to the jungle, where it was afterwards found.

This confession, the prisoner repeated to the magistrate, and the prisoner, No. 7, also made, before that officer, confession similar to what he had recorded in the mofussil.

Both the prisoners deny before me, and in their defence plead that the deceased ran out of the house in the middle of the

night unknown to them, and how she met with her death they are utterly unable to say.

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The witness, No. 1, in her evidence before me, allows that she heard the blow given, and that going in to see what was the matter, she saw the deceased on the ground, a corpse, and her husband staying by her side, with a wooden stool at his feet. He admitted to this witness that he had given his wife a blow with the stool on her side, from which she had fallen down dead.

The witness, No. 11, Myrunnee, deposes that she was in the adjoining south room, when she heard the sound of a blow, that on her going to see what had happened, she saw the dead body of her daughter-in-law, and was told by her son that she had fallen down dead from the effects of a blow struck by him with his open hand.

The cloth found in the jungle has been proved to have been seen often on the person of the deceased, and it has been recognized by a patch with which the cloth was some short time ago mended; the hair is certainly that of a human being and both the cloth, hair and bones are without doubt those belonging to the deceased, from the cloth being clearly recognized as hers, and from its being found together with the hair and bones in the place, which the prisoner, No. 7, pointed out as the one where he and his companion threw the body.

The prisoner admitted before the darogah and before the magistrate (both confessions of which are duly verified) that the deceased died from a blow struck with his hand; if we presume, as there is just reason to do from Foolja's evidence and from the probabilities of the case, that the hand held the wooden stool at the time, we have, I think, the true manner in which the death occurred.

The law officer finds prisoner, No. 6, guilty of culpable homicide, and prisoner, No. 7, of being an accessary after the fact.

Under all the circumstances of the case, I agree in this verdict. It is certain the prisoner, No. 6, was the author of his wife's death. There is presumptive evidence to infer that it was produced from a blow or blows of a wooden stool, and the prisoner removed the body in order to conceal the fact of the murder and in the possible dread of the result of a *post mortem* examination. As the facts established do not show a premeditated intention or any intention to take life, I think the law officer is right in convicting the prisoner of culpable homicide. I have sentenced him, in consideration of the whole facts of the case, to the highest term in my power, and have given a less severe sentence to the other prisoner, commensurate, in my opinion, with a less criminal part he took in the affair.

Sentence passed by the lower court.—No. 6 to be imprisoned for seven years with labor and irons, and No. 7 for three years

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without irons, and to pay a fine of 50 Rs. on or before the 18th day of May, 1854, or on default of payment to labor until the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and B. J. Colvin.) Having read the petition of appeal and examined the proceedings, we see no reason to interfere with the finding and sentence passed by the sessions judge upon the prisoners. The facts of the death of the deceased at the hands of No. 6, who, however, is not proved to have intended to kill her, and of the prisoner No. 7, having helped to conceal the corpse, are sufficiently established by the evidence.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

DUSRUTH AND GOVERNMENT,

versus

KASHEE SINGH (NO. 8,) AND SHEWUK SINGH (NO. 9.)

Patna.

1854.

September 7.

Case of KASHEE SINGH and another.

Conviction and sentence passed by the sessions judge, in a case of assault with severe wounding, upheld in appeal. Act XVI. of 1850, applies to cases of plundering property.

CRIME CHARGED.—1st count, assault attended with severe wounding of Dusruth; 2nd count, plunder of property belonging to the plaintiff.

CRIME ESTABLISHED.—1st count, assault attended with severe wounding of Dusruth; 2nd count, plunder of property belonging to the plaintiff.

Committing Officer.—Mr. H. C. Raikes, assistant with powers of joint-magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 18th April, 1854.

Remarks by the sessions judge.—This is a common case of assault with severe beating and plunder of the prosecutor's house. The blows inflicted by the two prisoners, which are clearly established in evidence against them, caused the fracture of both the prosecutor's arms.

He seems to have had an old quarrel with the prisoners in the preceding month of November about a watercourse, and on the present occasion, they went to his field in the village of Bhowara, which adjoins their own, and with many others, named by the witnesses, inflicted the beating, for which they now stand committed for trial.

After laying the prosecutor helpless, they plundered his house to the value of Rs. 30-8, worth of property. For the defence, it was stated that the prosecutor was a man of bad character, that he had come to the prisoners' fields at night to rob their

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crops and on being surprised in the act, he ran off, tumbled into a ditch, and in this fall that his arms were fractured. This story is of course an obvious and impudent invention. Since the report of the medical officer is conclusive as to the fractures being caused by blows of heavy *lattees* or *lohabundas*, I convict both the prisoners on both charges of the indictments, and the *futwa* of the law officer concurring, they are hereby sentenced to four years' imprisonment each without labor, and to pay a fine of 100 Rs. each, on or before the 1st of May next ensuing, or in default of payment, to labor. They will also pay a fine of Rs. 30-8. The same to be paid to the prosecutor under the provisions of Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The pleader, Moonshee Abbas Allee, who has appeared for the prisoners, has failed to point out any discrepancies in the evidence, or to convince the Court that the evidence for the defence can be allowed any influence in determining the real facts of this case.

The medical officer's deposition clearly proves that the prosecutor's arms were broken by blows, and that the fractures could not have been caused by a fall as pleaded in defence.

This fact alone refutes the most material part of the prisoner's defence.

We are also of opinion that the provisions of Act XVI. of 1850, apply to cases of plunder of property, such a mode of acquiring property comes under the head of wrongful appropriation referred to by the law.

Seeing no reason to interfere, we reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND SHEIKH PANCHOO,

versus

SHEIKH DOOKHOO (No. 1,) AND SHEIKH MEHTER (No. 2, APPELLANT.)

24-Pergunnahs.

1854.

September 7.

Case of SHEIKH MEHTER and another.

Conviction and sentence passed by the sessions judge in a case of riot with culpable homicide, upheld in appeal.

CRIME CHARGED.—1st count, culpable homicide of Sheikh Kurreem Bux; 2nd count, affray with ditto; 3rd count, affray with wounding; 4th count, riot with homicide; 5th count, riot with wounding.

CRIME ESTABLISHED.—Riot with culpable homicide.

Committing Officer.—Mr. H. Fergusson, officiating magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 9th June, 1854.

Remarks by the officiating additional sessions judge.—A drunken broil was the origin of this case. The prisoners and one Amir Khan, not taken, were drinking in a toddy-shop, and singing to a musical instrument called a *dhole*. The deceased and two others, the witnesses, Nos. 1 and 2, repaired to the same shop and after the prisoners had left it, possessed themselves of the *dhole* and commenced playing and singing. After a while, the latter returned and demanded the musical instrument. The party in possession declined giving it up, when an altercation ensued. Words ran high and under the excitement of drink were succeeded by blows. In the mêlé the deceased received a wound on the head with a *lattee* to the effusion of blood. The injury was by no means severe in itself, for the deceased walked home after receiving it and declined to remain in the native hospital for medical treatment. The wound took an unfavorable turn however in a few days and terminated fatally in lockjaw, as stated in the examination of Dr. Stuart of the Chandnee hospital. The only defence set up by the prisoners is that they were drunk and cannot say what occurred. They admit their presence at the place, but call witnesses to prove that they took no part in the affray. These persons state that a drunken broil took place, and that the prisoners and their accusers were both present on the occasion. The quarrel was sudden and unpremeditated and the injury in itself slight, hence the mitigated sentence passed on the prisoners.

Sentence passed by the lower court.—To be imprisoned without irons for (4) four years each and to pay a fine of twenty-five (25) Rs. each within twenty days, or in default of payment to labor until the fine be paid or the term of their sentence expire.

1854.

September 7.

Case of SHEIKH MEHTER and another.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Sheikh Mehter alone appeals. He asserts that he was implicated in this matter through enmity, and appeals to the fact of his voluntary appearance as a proof of his innocence.

The evidence of the eye-witnesses is clear, consistent and conclusive, as to the fact of the deceased having been beaten by the appellant, his fellow prisoner Dookhoo, and a third person, named Ameer Patan, and the evidence of the medical officer shews that death, through lock-jaw, was the consequence of the wound which had been inflicted on deceased's head. We uphold the conviction and confirm the sentence.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

GOVERNMENT AND MUSSUMUT CHUMLEA,

versus

SHEOPERSAUD SOONDEE.

Shahabad.

1854.

September 7.

Case of SHEOPERSAUD SOONDEE.

Prisoner convicted of culpable homicide, sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Wilful murder of Moolchand Dome, husband of Mussumut Chumlea, the prosecutrix.

CRIME ESTABLISHED.—Culpable homicide of Moolchand Dome, husband of the prosecutrix.

Committing Officer.—Mr. H. C. Richardson, officiating magistrate.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th April, 1854.

Remarks by the sessions judge.—The case presents another fatal catastrophe caused by the reckless use of the *Arrah lathee.*

The deceased went one day to the prisoner's shop and asked for some spirits gratis. The prisoner refused it and abused him, the abuse called for the renumeration, when the prisoner struck him a blow on the head with a stick and killed him on the spot.

There was no previous malice and the blow was struck in the heat of the quarrel.

The occurrence was witnessed and is clearly proved by the evidence of the eye-witnesses as per margin.*

The prosecutrix's statement is questionable. Before the thannah, she said that she heard her husband had died from a fall of a tree; before the magistrate, and the sessions court, she says she saw him killed by the prisoner. I am inclined to doubt both statements, the first, I conceive, to

* Gunesh Doobee, Ramsurn Doobee, Nohora Doobee, Lonka Doobee, Goordeal and Nuthoo Dosadhs.

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have been induced by threats or corruption, the second to be an extreme in the opposite side, but the evidence is distinct and satisfactory, the testimony of the civil surgeon shews that the death of the deceased was caused by the blow of a *lathee* which fractured his skull.

The prisoner pleads an *alibi*, at a place some two miles off.

Such a defence, depending on the accuracy of witnesses as to minutes and half hours, is utterly insufficient to throw discredit on the evidence for the prosecution.

The *futwa* convicts the prisoner of culpable homicide and declares him liable to *accoobut*.

Sentence passed by the lower court.—To be imprisoned with labor in irons for (7) seven years from the 27th April, 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Moonshee Ameer Allee, on the part of the prisoner, remarked that the prosecutrix had given different accounts of the way in which her husband, the deceased, had met his death, and these accounts were so conflicting, that no charge can be said to have been brought forward; that the prisoner had also cited witnesses who fully establish the *alibi* pleaded by him. The Court observe in this that the record shows that the prosecutrix at first only stated what she had heard regarding her husband's death, and that her subsequent account, detailing the facts as having been witnessed by herself, has not been relied upon by the sessions judge. There are, however, the depositions of three eye-witnesses whose evidence seems unimpeachable, and whose account of the quarrel between the deceased and the prisoner with its fatal result to the former, there is no reason to question. We consider the sessions judge quite justified in rejecting the *alibi* on the grounds stated in his remarks; seeing no reason to interfere in this case, we reject the appeal.

The sessions judge has made some mistake regarding the names of the eye-witnesses; those entered marginally by him in the statement are not to be found in the calendar.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

TARACHAND MANNAH (No. 1,) BUJAHURRY BAGDY (No. 2, APPELLANT,) PITTUMBUR MANJEE (No. 3, APPELLANT,) ROGONATH SHAMONTH (No. 4,) RUTTON SHAMONTH (No. 5,) MOHESH DOME (No. 6, APPELLANT,) AND ISSEN SIRCAR (No. 7.)

24-Pergunnahs.

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Case of
BUJAHURRY BAGDY and others.

Conviction and sentence passed by the sessions judge in a case of dacoity, upheld in appeal.

CRIME CHARGED.—1st count, dacoity in the house of prosecutor, Susteeram Ghose, and plunder of property to the amount of Rs. 84-1-0; 2nd count, prisoner, No. 3, is further charged with receiving a portion of the above property, knowing it to have been plundered.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. M. Lowis, assistant exercising powers of joint-magistrate of 24-Pergunnahs.

Tried before Mr. J. S. Torrens, sessions judge of 24-Pergunnahs on the 26th April, 1854.

Remarks by the sessions judge.—The prisoners plead *not guilty*, Nos. 2, 3, 4, 5 and 7, confessed before the joint-magistrate and darogah, and name the remaining prisoners clearly as having been engaged in the dacoity, and though this would not, of course, in itself form sufficient grounds for conviction, I consider the circumstantial evidence, as to the prisoners, Nos. 2 and 6, having gone and deposited money, proceeds of the sale of property, the day after the dacoity, with the witness, No. 31, and the recognition from his voice of Tarachand Mannah, No. 1, by the witness No. 8, corroborated as these facts are by the confessions, fully sufficient evidence to convict the prisoners not confessing of the charge, and sentence them all to (7) seven years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Peary Mohun Bose, moktyar, appears for the prisoners. Of the five prisoners, Nos. 4 and 7, appealed to the *sudder* court before, and their appeals were heard and rejected on the 8th of July last. This leaves only the appeals of prisoners, Nos. 2, 3 and 6, for our present consideration.

The prisoners, Nos. 2 and 3, confessed before the darogah, and the magistrate, and a silver armlet was found in the house of No. 3, and identified by the prosecutor's witnesses, as part of the stolen property; No. 6, confessed only to the darogah, but

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witness No, 31, in confirmation of the confessions of Nos. 2 and 6, deposed to having received from them, forty-eight rupees, which they had told the darogah was the sale proceeds of the stolen property, deposited by them in the hands of the witness. This was probably done rather than trust the money to one of the gang, till they could divide it amongst themselves. We see no reason whatever to distrust the facts in evidence against the prisoners, on the confessions made by them, and therefore reject this appeal.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AMD RUGHONANDUN,

versus

RUCH CHOWKEEDAR.

Sarun.

1854.

September 8.

Case of RUCH CHOWKEEDAR.

The prisoner's appeal was dismissed on the evidence for the prosecution.

CRIME CHARGED.—Burglary with theft of property value Rs. 8-9-6.

CRIME ESTABLISHED.—Burglary with theft of property value Rs. 8-9-6.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sarun with full powers of a magistrate.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 17th July, 1854.

Remarks by the officiating sessions judge.—The defendant is chowkeedar of Gopalpore, distant about a mile from Bulran, where plaintiff resides. On the night of the 28th ultimo, he cut his way into plaintiff's house and when stealing grain was seized by the plaintiff and secured by the aid of witnesses Nos. 1 and 2, who came up immediately on hearing the plaintiff's cries, witness No. 3, closely following. The *seendkatee* was subsequently found in plaintiff's premises. The prisoner stated before the magistrate that he had got drunk and missing his road was seized as a thief by the plaintiff, and here the defence is of the same sort viz. that he fell asleep after going his rounds missed his road on his way home and was apprehended by the plaintiff. It seems that not above one burglary in fifty, which occurs in this district is prosecuted with success, and therefore concurring with the Moulvee that the crime charged is proved, I sentence the prisoner to five years' imprisonment with labor in irons and to a fine of Rs. 8-9-6 recoverable under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court see no reason for interference. There is clear proof that the prisoner was caught in the very act of stealing the grain, having burglariously entered the house.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND NEELARAM DEB,

versus

GOBIND PERSHAD ALIAS FUCKEER SINGH, (No. 1,) GOLUCK DOSS, (No. 2,) BUDDINATH BAIRAGEE, (No. 3,) AND GOURMOHUN CHUCKERBUTTY, (No 4.)

Rungpore.

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Case of GOBIND PERSHAD *alias* FUCKEER SINGH and others.

The prisoners were convicted of culpable homicide and sentenced, three of them to 14 years' imprisonment and the fourth seven years'.

CRIME CHARGED.—1st count, culpable homicide of Kumlakant; 2nd count, accessaryship before and after the fact; 3rd count, aiding and abetting.

Committing Officer.—Mr. S. F. Davis, joint-magistrate of Serajgunge.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 10th August, 1854.

Remarks by the officiating sessions judge.—On Thursday the 29th December, (15th Poos last,) the prosecutor Neelaram Deb, complained to the joint-magistrate at Serajgunge that his brother had been illegally confined by the prisoner No. 1. Next day he again complained stating that on returning home, he heard that his brother had been beaten to death by the prisoners.

The darogah was ordered to investigate. On the day above mentioned, Oodoy Chand Deb, the only eye-witness of the crime charged, had told his zemindar Gopal Roy of the occurrence, who immediately despatched him with his own servant witness No. 4, to give information at the thannah. On Friday the 30th, a burkundaz sent out by the darogah had that part of the river, into which, according to witness No. 1, the body of prosecutor's brother had been thrown, dragged with nets but without success, and the same fishermen again failed on the morning of Saturday the 31st; but the darogah coming out about 9 o'clock that day sent for other fishermen and a large net, and at the third cast, a body was brought up with a bag of clay tied to the loins and a pot appeared to have been tied to the neck. The body was at once recognized to be that of prosecutor's brother, and on the evidence given by witness No. 1, and the others, the prisoners who denied their guilt were committed by the magistrate.

On the trial, prosecutor deposed that he heard from his sister of his brother having been confined and from his sister-in-law, who was told of it by witness No. 1, of his having been beaten to death by prisoners. Witness No. 1, Oodoy Chand Deb, is the sole eye-witness and upon his credibility the conviction rests. He and prisoners Nos. 2 and 3, were in the habit of hiring a boat and borrowing money to trade with from prisoner No. 1, repaying him the loan with half the profits after each voyage.

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Case of GOBIND PERSHAD *alias* FUCKEER SINGH and others.

About the middle of December last, they hired the boat and took an advance of 119 Rs. from the prisoner No. 1, and went off, taking deceased with them towards Rungpore. On coming to a place called Borodoho, they found that the bag in which 114 rupees of the advance had been tied up contained only 2 rupees worth of pice; astounded, they returned as quickly as possible told what had occurred to prisoner No. 1, and offered to repay the amount, giving a bond for it in the meantime. This offer the prisoner refused and put them all in charge of Sokta chowkeedar; prisoners Nos. 2 and 3, ryots of prisoner No. 1, were soon released; at night the chowkeedar went away and witness and deceased slept in the same hut with prisoners Nos. 1, 2 and 3; next day, Wednesday, at noon, prisoner No. 4 came, made witness, deceased and prisoners Nos. 2 and 3, bathe and stand in their wet clothes before a *toolsee* tree under which he placed four *butt leaves* with some thing previously written on them, each of the four picked up a leaf and gave it to prisoner No. 4, then a ball of cow-dung was given to each, which they were desired to break, a rupee was found in deceased's ball; prisoner No. 4, then said that deceased had stolen the money and that witness was his accomplice. These two were then confined in prisoner No. 1's house until midnight, when by No. 1's order prisoners Nos. 2 and 3, slapped and beat them, Nos. 1 and 4, desiring them to give up the rupee. Witness was soon let alone, but deceased was taken out and ducked in water and then brought into the *veranda* and severely beaten with their fists by prisoners Nos. 2 and 3, who rolled him about beating this side and that, while No. 1, beat him on the back with a shoe; they tied deceased by the legs and arms to separate posts, and beat him incessantly; witness cried and offered to pay, if they would let deceased go, but prisoner No. 4, refused and said the beating must go on till the deceased confessed, it did go on, deceased could only groan, his groans ceased, he became senseless, the prisoners tried to recover him, but in vain, he was dead. It was then about 3 A. M. The prisoners made witness swear to keep silence, and prisoners Nos. 2 and 3, slinging deceased's body to a bamboo and taking a bag and *kulsee* with them carried it, accompanied by prisoner No. 1 holding witness, to the river about a coss off, taking rather a round about road to avoid the villages; on arriving there prisoners, Nos. 2 and 3, went into the water tied a bag of earth round deceased's loins and a pot to his neck, and shoved the body into deep water with the bamboo on which they had carried it. During this time prisoner No. 1, stood on the bank holding witness by the hand about 70 yards* off, witness could not see the body, but he could see the prisoners pushing with the bamboo, and hear the gurgling of a pot filling with water. The night was dark, but not very dark at this time, as morning was

* 140 short paces.

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approaching. The prisoners then threatened to do for witness too, but on his begging and praying and promising to leave the country, they again made him swear silence, and let him go. He went home, told what he had seen to deceased's wife and to his zemindar, and was sent to the thannah; a burkundaz was sent out next day, Friday, the river was dragged in vain that day and the next morning till the darogah (who appears to have arrived the preceding night) came, when other fishermen (the first fishermen witness says held a *jolkur* under prisoner No. 1, and he implies that they did not do their best) and a larger net was obtained; at the 3rd cast, the body was brought up, and at once recognized by himself and others and particularly by the wife of deceased, who at once broke her shell bracelets saying, she was a widow.

Witness No. 2,* saw the ordeal performed by prisoner No. 4's directions, is a ryot of prisoner No. 1.

* No. 2, Joyandee Pramanick.

Witness No. 3,† also a ryot of prisoner No. 1, heard him on the Wednesday tell witness No. 1, that he must pay the money.

† No. 3, Ashandee Pramanick.

Witness No. 4,‡ was sent by his master with witness No. 1, to give information at the thannah.

‡ No. 4, Neetoy Mallee.

Witnesses Nos. 5, 6 and 7,§ were the fishermen who dragged the river and found the body soon on Saturday afternoon.

§ No. 5, Bhyrub Manjee.
,, 6, Kalee Manjee.
,, 7, Gour Manjee.

Witnesses Nos. 8, 9 and 10,|| as well as Nos. 1, 4, 5, 6 and 7, all described the body as having the features destroyed by fish, as well as the soft parts of the limbs and the abdomen, but the back and chest were perfect and from the shape of that part of the body alone, they recognized it as that of prosecutor's brother Kumlacant Deb. The witnesses firmly believed in their recognition, and so evidently did deceased's wife, who according to several of the witnesses, acted as described by witness No. 1, on seeing the body. I see no reason why a body should not be so recognized, but I should not be willing to give such credence to a recognition of the kind as to found a conviction of homicide on it, unless supported by other circumstances, such support in this case is given by witness No. 1, whose evidence I entirely believe; he told his tale to the villagers, the zemindar and the police on the very day on the morning of which the occurrence took place, he showed the place where he had seen the body thrown in and where it was found after repeated unsuccessful trials, the perseverance on making which, showed how completely he was believed in the mofussil; his evidence has been con-

|| No. 8, Kasee Pal.
,, 9, Ram Shoonder Dhur.
,, 10, Kasheenath Deb.

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sistent throughout and was given before me in a manner which convinced me that the man, to the best of his belief, was telling what he actually witnessed.

No. 11, *the Apothecary in medical charge at Bograh.*—The medical officer found fifteen ribs broken, the covering of the chest and back was perfect, but the absence of the entrails, &c. rendered him unable to give any opinion of the cause of death.

Defence.—The prisoner No. 1, states in his defence that he advanced 119 Rs. to witness No. 1, and the prisoners Nos. 2 and 3, knowing nothing of deceased until the four came to him on the 14th Poos, and told him of the loss of the money which they offered to make good and went away; and next day Neetoy came to his partner Kumla Sen asking the release of Kumlacant, on which he (prisoner) complained at the thannah of the loss of the money.

Prisoners Nos. 2 and 3, agree as to the loss of the money, their reporting the fact to prisoner, No. 1, after which they all went to their own house and next day Neetoy came and demanded the release of witness No. 1, and the deceased.

By this defence, the prisoners mean to imply that the deceased and witness No. 1, went home, and then next day got fellows to demand their release as a foundation for a case like the present with the view of getting off payment of the money, but such as it is, the witnesses, called by them, do not establish it.

Prisoner No. 4, states he was in his own house one and half coss from prisoner No. 1, on the day of occurrence, and that he had a quarrel with witness No. 1, whose sacrificing priest he is, regarding his, witness's, connexion with some woman. He calls no witnesses to the latter point, and those who appear to the *alibi* utterly fail to prove it.

The futwa of the law officer, and opinion and recommendation of the sessions judge.—The law officer convicted Nos. 1, 2 and 3, on the first charge and No. 4, on the third, on violent presumption, there being only one eye-witness, and I concur in the conviction and I consider that the deliberation and determination with which the beating was inflicted on deceased and the time, midnight, selected for it, show the extent to which prisoners intended to go if necessary in their attempt to extort a confession from deceased, and I think, therefore, that seven years' imprisonment with labor and irons, to which I am restricted by the law officer's *futwa*, is by no means an adequate punishment for such a crime, and I beg to recommend a sentence of fourteen years' imprisonment with labor and irons for prisoners Nos. 1, 2 and 3, and of five years with labor for No. 4.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) This case is so fully and clearly reported by the sessions judge, that it is not necessary for the Court to refer particularly to the circumstances under which the

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Case of GOBINDO PERSHAD SINGH and others.

charge was brought. We concur with him, in regarding the evidence of the witness Oodoy Chand Deb, as entirely trustworthy, supported as it is in all material points by the circumstantial evidence on the record, namely, the discovery of the body (with a weight attached to it) near the place in the river as indicated by him, and the fracture of the ribs, according with the violence described. These facts taken together with the promptitude with which his information was given, and the general consistency of his statements, from first to last, leave no reasonable doubt of the death of the deceased having been caused by the violent treatment he received at the hands of the prisoners; the evidence for whose defence fails entirely to refute the facts referred to. Concurring with the sessions judge in the conviction, we sentence prisoners Nos. 1, 2 and 3, as proposed by him to fourteen years' imprisonment with labor in irons. We consider the ends of justice cannot be satisfied with a punishment of less severity than seven years' imprisonment, with labor and irons, in the case of No. 4, Gour Mohun. We accordingly pass that sentence.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

MUDDUN LAHA AND GOVERNMENT,

versus

GUNESH CHUNDER SHYE (No. 2,) DURBOMOYE SUTGOPINEE (No. 5, APPELLANT.)

Hooghly.

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Case of DURBOMOYE SUTGOPINEE.

The conviction and sentence passed by the sessions judge in a case of dacoity and receiving the plundered property, were upheld in appeal.

CRIME CHARGED.—1st count, dacoity and plundering property to the amount of Rs. 915-11-6, on the 1st April, 1854; 2nd count, knowingly receiving portions of plundered property.

CRIME ESTABLISHED.—No. 2, dacoity, and No. 5, knowingly receiving portions of plundered property.

Committing Officer.—Baboo Kissory Chand Mitter, deputy magistrate of Jehanabad.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 12th July, 1854.

Remarks by the officiating sessions judge.—The trial was conducted under the provision of Act XXIV. of 1843.

The prisoners plead *not guilty.*

The prosecutor's house, in the village of Sreepore thannah, Jehanabad, was attacked by a band of thirty or forty dacoits about midnight of the 20th Choit; seven or eight of their number forcing open the door, entered the house, one of them struck the prosecutor a blow, which seems to have frightened him so

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much, that he could neither recognize his assailants nor give an alarm, the other inmates of the house escaped, and the dacoits succeeded in carrying away booty consisting of cash, ornaments domestic utensils, &c., valued at Rs. 915-11-6, none of the dacoits were recognized, as the villagers, who heard the noise, did not dare to approach near enough to identify them.

On the second day after the dacoity, the prisoner Gunesh Chunder Shye No. 2, was met by the chowkeedars, witnesses Nos. 2 and 3, at Khutnagore in the Burdwan district, several coss from the scene of the dacoity, and four coss from his own house, carrying some articles in his clothes and their suspicion being roused, they detained him, and he produced the articles Nos. 1 to 7, consisting of ornaments vessels and cloths which he acknowledged that he had obtained in the dacoity of which he subsequently made a full confession, both before the police and the deputy magistrate, in the former of which he implicated the prisoner No. 5, Durbomoye Sutgopine, in whose house were found four silver ornaments and a colored cotton *sarree*. She confessed before the police her privity to the dacoity and that she had received the articles found in her house from prisoner No. 2. The latter admission she repeated, in her confession before the deputy magistrate, but she qualified her previous statement by saying that she did not suspect them to have been dishonestly obtained, until she heard of the dacoity.

All the property was proved to belong to the prosecutor. Both prisoners retracted their confessions at the trial, and Durbomoyee produced witnesses to prove that the ornaments were her own property; their testimony is however too general to weigh against the evidence for the prosecution, and one of the witnesses appears to have been implicated in the case.

I convict the prisoner Gunesh Chunder Shye of both counts of the charge, and the prisoner Durbomoye No. 5, of the 2nd count, upon their confessions both before the police and the deputy magistrate and upon the evidence.

I sentence the prisoner No. 2, to seven years' imprisonment with labor in irons, and prisoner No. 5, to three years' imprisonment with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) There is nothing in this case calling for the interference of the Court.

The prisoner confessed in the mofussil to having received the property, knowing it to have been stolen in the dacoity. In the foujdary, she also admitted the possession, but denied having known at the time she received it that it had been dishonestly acquired by the person, who gave it to her. In her appeal, she asserts that the property is her own, and that the men of the village, in which she resides, conspired together to procure her conviction.

It appears from the record, that she was mentioned by one of the dacoits, as having part of the property in her house, and it was discovered hidden under the earth, where a water-jar stood. Under these circumstances, we can give no credit to her assertions that she was not aware the property had been stolen. We reject the appeal.

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PRESENT :

J. DUNBAR, AND H. T. RAIKES, ESQS. *Judges.*

GOVERNMENT,

versus

BISHOON PANDEY (No. 3,) PUDDANATH PANDEY (No. 4.)

Shahabad.

1854.

September 11.

Case of BISHOON PANDEY and another.

Conviction and sentence passed by the sessions judge in a case of affray with culpable homicide and wounding, upheld in appeal.

CRIME CHARGED.—Affray attended with wilful murder of Sew Churn Doss and wounding Ramgolam Doss on one side and wounding Jhoomuck Pande and Naik Pande on the other side and Balgobind Kahar, a witness.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Sew Churn Doss and wounding Ramgolam Doss on one side and wounding Jhoomuck Pande and Naik Pande on the other side and Balgobind Kahar, a witness.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 8th April, 1854.

Remarks by the sessions judge.—The circumstances of the case were thus detailed in statement No. 6, for March, 1854.

" This was one of those fierce affrays, which so frequently occur in this district at the cold season.

" There are no peculiar incidents to record ; the subject of quarrel was a field, said to belong to the deceased Sew Churn Pande, but to have been purchased at a judicial sale by prisoner No. 3.

" Both parties met on the ground without any deliberate or settled purpose, a quarrel ensued as to the right of occupation and swords and sticks were used. Four men were wounded either with sticks or swords and one died from the effects, his spleen having been ruptured as shewn by the evidence of the medical officer.

" No disinterested witnesses have been produced and the facts are accordingly colored by the witnesses, according to the interest or connexion with the contending parties, but they are proved beyond doubt and the prisoner's defence, which goes only to establish the point of greater or less participation, is not satisfactorily supported.

1854.

September 11.

Case of Bishoon Pandey and another.

"Jhoomuck Pande was clearly the headman on the one side, as Sew Churn deceased was on the other.

"But the latter has died, since his release from hospital.

"Looking at the serious consequences of this affray and the frequency of their occurrence in this district, severe example is necessary."

The presence and participation of the prisoners before the court is established by the evidence of the eye-witnesses as per margin.*

* Jeet Roy and Phun Roy.

The prisoners plead an *alibi* and adduce sundry witnesses in support of the plea.

I do not hold the plea to be established, such evidence is seldom of any value, and in the present case it appears clearly to be tutored.

Sentence passed by the lower court.—Imprisonment, each with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H T. Raikes.) The prisoners now appealing in this case, as mentioned by the sessions judge in his remarks on the trial, are connected with the case of affray, in which Sew Churn Singh met his death. The prisoners previously convicted and sentenced having also appealed, the case, as affecting all the prisoners, was taken up at the present sitting, and the pleaders for the prisoners were heard in their defence.

The remarks of the Court, appended to the trial of Ramgolam Doss and others, are equally applicable to this case. We see no reason to interfere with the conviction, and reject this appeal.

Shahabad.

1854.

September 11

Case of Ramgolam Dass and others.

Conviction and sentence passed by the sessions judge in a case of affray with culpable homicide and wounding, upheld in appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

RAMGOLAM DASS (No. 2,) JHOOMUK PANDEY,† (No. 3,) NAIK PANDEY (No. 4,) AND SHUPERKASH PANDEY (No. 5.)

CRIME CHARGED.—Affray attended with wilful murder of Sew Churn Dass on one side and wounding Ramgolam Dass on one side, and Jhoomuk Pandey and Naik Pandey on the other side, and Balgobind Kahar, a witness.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Sew Churn Dass on one side and wounding Ramgolam

† Dead.

Dass on one side, and Jhoomuk Pandey and Naik Pandey on the other side, and Balgobind Kahar, a witness.

1854.

September 11.

Case of RAMGOLAM DASS and others.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 20th March, 1854.

Remarks by the sessions judge.—This was one of those fierce affrays which so frequently occur in this district at the cold season.

There are no peculiar incidents to record, the subject of quarrel was a field, said to belong to the deceased, Sew Churn Pandey, but to have been purchased at a judicial sale by prisoner, No. 3.

Both parties met on the ground without any deliberate or settled purpose, a quarrel ensued as to the right of occupation, and swords and sticks were used. Four men were wounded either with sticks or swords, and one died from the effects, his spleen having been ruptured as shewn by the evidence of the medical officer.

No disinterested witnesses have been produced and the facts are accordingly colored by the witnesses, according to the interest or connexion with the contending parties, but they are proved beyond doubt and the prisoners' defence, which goes only to establish the point of greater or less participation, is not satisfactorily supported.

Jhoomuk Pandey was clearly the headman on the one side, as Sew Churn, deceased, was on the other.

But the latter has died since his release from hospital.

Looking at the serious consequences of this affray, and the frequency of their occurrence in this district, severe example is necessary.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven (7) years from the 20th March, 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) All three prisoners have appealed. Moulvee Murhumut Hossein appears on behalf of two of them, viz. Sheoperkash Pandey and Naik Pandey.

Baboo Sumbhoonauth Pundit for the prosecution. The appeal of Bishun Pandey and Podenath Pandey in connection with this case, was heard and disposed of at the same time. Murhumut Hossein urged, on behalf of his clients, that the evidence for the prosecution is contradictory and insufficient, and that the alteration of the name, Rampurkash to Sheoperkash Pandey, in two places in the record, is open to suspicion. The Court find no contradictions in any material points in the evidence, and they hold it to be amply sufficient to establish the fact, that all three prisoners were engaged in the affray. The alteration of the name, Rampurkash to Sheoperkash, is evidently nothing more than the correction of an error, and is itself of no consequence. The Court reject the appeal and confirm the sentence.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

GOVERNMENT AND SHEIKH NIAMUT ALEE,

versus

SHEIKH FAKIRAH.

Sarun.

1854.

September 11.

Case of SHEIKH FAKIRAH.

Prisoner convicted of embezzlement of his master's property, sentenced by the sessions judge to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, embezzlement of monies and other property valued at Rs. 297-8-3, the property of his master; 2nd count, theft of the above.

CRIME ESTABLISHED.—Embezzlement of property valued at Rs. 297-8-3.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 15th July, 1854.

Remarks by the officiating sessions judge.—The defendant was the confidential servant of Sheikh Subqtoollah, foujdary Nazir, and for many years had charge of his property. On the night of the 12th October last, he left the Nazir's house, and next morning it was discovered that the box, in which money and other valuables were kept, and of which the prisoner had the key, was empty, the lock being opened. Search was made for the prisoner without success for some months, but he was at last apprehended at his home in the Shahabad district. The evidence for the prosecution, witnesses Nos. 1, 2 and 3, proves that the prisoner had charge of the Nazir's property, and that he absconded as explained without accounting for the money, &c. in his possession. The prisoner denies the charge, but says that he lost his senses and wandered from the Nazir's he knows not where for a time, and then went home; that he fell ill again, and was intending to return to the Nazir's on his recovery, when he was seized by the police jemadar. He admits having had charge of the Nazir's property and his plea of illness is not established. The moulvee convicts the prisoner of embezzlement of property valued at Rs. 297-8-3 and concurring in this finding, I sentence him to five years' imprisonment with labor in irons and to a fine of Rs. 297-8-3, under Act XVI. of 1850, payable to Subqtoollah.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner's flight from his master's house at the time affords strong presumption of the truth of the charge against him. His defence is anything but satisfactory. I see no reason to interfere with the sentence passed on the prisoner, and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND KHATTER SHEIKH,

versus

MUDOOSOODUN HAREE CHOWKEEDAR (No. 1,) DHUNKISTO BAGDI CHOWKEEDAR (No. 2,) AND METHA ALIAS MIRTONJOY CHOWKEEDAR (No. 3.)

East Burdwan.

1854.

September 12.

Case of MUDOOSOODUN HAREE CHOWKEEDAR and others.

The prisoners, who were police chowkeedars, were convicted of attempt to commit dacoity and sentenced to ten years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Having attempted to commit dacoity at the house of the prosecutor Khatter Sheikh, prisoners being police chowkeedars at the time of the dacoity

CRIME ESTABLISHED.—Attempt to commit a dacoity.

Committing Officer.—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 11th August, 1854.

Remarks by the sessions judge.—This case of dacoity occurred within one mile of this court-house. The prosecutor's house was attacked by some seven or eight persons on the night of the 5th July last, (22nd Assar 1261,) but no property was carried off. The prosecutor is a butcher by trade, and carries on his business in the suburbs of the town of Burdwan, and as he was supposed to have accumulated a little money, his house was attacked. The prosecutor was sleeping in a substantially built mud hut, and on hearing the dacoits within his premises, he closed the door with a strong wooden bar which defied all the efforts of the dacoits in trying to force an entrance. The servants of the prosecutor were sleeping in the *verandah* of the hut and in other parts of the premises, and by the light of the torches, they recognized the three prisoners among the dacoits. The houses of the three prisoners are in the village of Baychar *hat*, a small village on the bank of the Damoodah, not more than half a mile from the house of the prosecutor. The villagers hearing the disturbance were attracted to the scene of the dacoity by the cries of assistance from the prosecutor and his servants, and many of the villagers recognized the three prisoners, and some of them swear to their identity in my court with the strongest assurance. They also speak to their having known the prisoners for some time and to their frequently passing through their village, and to their being thoroughly acquainted with the personal appearance of the prisoners. The prisoners, finding their endeavours to force an entrance into the hut where the prosecutor was, and where they supposed he kept his more valuable property ineffectual, left the premises and on the villagers pursuing them they dispersed in different directions. The noise made by the villagers aroused

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Case of MUDOOSOODUN HAREE CHOWKEEDAR and others.

some burkundazes stationed at a police *pharee*, a short distance from the scene of the dacoity, and on their approaching the place they fell in with the dacoits and arrested two of them, prisoners No. 1, Mudoosoodun, and No. 2, Dhunkisto Bagdi chowkeedars. Prisoner No. 3 was arrested the following morning in consequence of his being recognized by the prosecutor and the witnesses Nos. 1, 2, 4, 5 and 6, at the time of the dacoity. Prisoners Nos. 1 and 2 were also recognized by the prosecutor, and witnesses Nos. 1, 2, 4, 5 and 6, and in this evidence I put full faith. Though I admit that the evidence of recognition should always be received with caution, I cannot reject, as worthless, such evidence in this case, for though the prisoners assert that such testimony is false, yet they are unable to assign any cause for its being tendered, and they cannot explain the object of its being given, nor are they able to account for any enmity or bad feeling against them on the part of the witnesses. The prosecutor is a quiet inoffensive man, bears a good character and is apparently truthful in his statement, and he gave his evidence without any malicious or vindictive feeling, and I can see no reason why I should not put full faith in the evidence for the prosecution. The statements of all the witnesses are consistent and contain no improbabilities. Mudoosoodun prisoner No. 1, names witnesses to prove that on the night of the dacoity he was at home, in his house in consequence of the illness of his daughter, but they fail to prove that the prisoner had not ample opportunity of accompanying the dacoits. One of this prisoner's witnesses is father of prisoner No. 2, and the other is mother of prisoner No. 3. Another witness speaks to the prisoner being at his house in the morning of the day when the dacoity occurred. Prisoner No. 2, declines having the evidence of the witnesses taken, whom he named before the magistrate. Prisoner No. 3 Metha alias Mirtonjoy, names some witnesses to prove an *alibi*, but they are unable to say where the prisoner was on the 22nd Assar, the day of the dacoity. The prisoners were all chowkeedars. The charge in this case was "attempting to commit dacoity," and though the crime from the facts of the case strictly amounts to dacoity, I did not consider it necessary to cancel the commitment and to order the prisoners to be committed on the higher charge, as the law makes the punishment in both cases the same, (clause 1, section 3, Regulation XVI. 1825). I convict the three prisoners, No. 1 Mudoosoodun Haree Chowkeedar, No. 2 Dhunkisto Bagdi Chowkeedar, and No. 3 Metha alias Mirtonjoy Bagdi Chowkeedar, of an attempt to commit a dacoity and sentence them to ten years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) All the particulars of this case are very fully detailed by the sessions judge in his remarks on the

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September 12.

Case of MUDOOSOODUN HARRE CHOWKEEDAR and others.

trial. We see no reason whatever to doubt the evidence of the eye-witnesses, who saw the attack on the prosecutor's house and recognized all the prisoners while engaged in it;—two of the accused were taken by the police at a short distance from the village, and the apprehension of the third was made on the statement of the villagers shortly after these occurrences.

The prisoners have urged nothing in their appeal worthy of remark, and we see no reason to interfere with the sentence passed upon them.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND SEDAM MANJEE,

versus

MUDUN DOOAH.

Midnapore.

1854.

September 12.

Case of MUDUN DOOAH.

The prisoner who was caught by the villagers flagrante delicto was convicted as an accomplice in dacoity, and sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Having committed a dacoity in the house of the prosecutor, Sedam Manjee, and plundered therefrom property to the value of Rs. 387-3-6. 2ndly. Knowingly having in his possession, property acquired by the above dacoity.

CRIME ESTABLISHED.—Accomplice in the dacoity.

Committing Officer.—Moulvee Gholam Sufder, law-officer, exercising powers of a magistrate at Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 3rd July, 1854.

Remarks by the sessions judge.—The prisoner pleads *not guilty*. The prosecutor deposes that on the night of the 22nd March, his house was attacked and robbed by a gang of dacoits of property to the value of Rs. 387-3-6, that on the alarm being raised, the village police came to the spot and arrested the prisoner in the act of making his escape with some of the stolen property in his possession. This statement is corroborated by the witnesses, there are some discrepancies in their evidence, but they do not, we think, invalidate their testimony in respect to the seizure of the prisoner. The prisoner in the mofussil and in this court pleads that he is subject to aberration of intellect; that he gains a livelihood by wandering about the country begging; that on the night of the dacoity in prosecutor's house; he had sought shelter, in his (the prosecutor's) cow-house; that during the night he was roused up by the noise of robbers attacking prosecutor's house, and becoming alarmed he endeavoured to escape, when he was arrested, beaten and accused as an accomplice in the robbery. Before the magistrate, he con-

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Case of MUDUN DOOAH.

fessed to having been concerned with twelve others in committing a dacoity in prosecutor's house. The prisoner in this court betrayed no symptoms of insanity, his answers were clear and coherent, and there was nothing in his manner to indicate that he was labouring under any mental infirmity whatever. His conduct, when arrested, would also indicate that he had his wits about him. He gave a false name and parentage in his defence in the mofussil, denying that he had any fixed place of residence or family ties of any kind. It is, however, satisfactorily proven that he lives within four coss of the prosecutor's village, has a wife and family and ostensively gains a livelihood by cultivating his fields. These facts are corroborated by the witnesses he cites in support of his defence. The presumption from all the circumstances elicited on trial is, that his confession before the magistrate is true, and that he was an accomplice in the robbery of prosecutor's house. We accordingly convict him on that charge, and sentence him, as shewn in the statement.

Sentence passed by the lower court.—Seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) Apart from the confession of the prisoner; before the magistrate, the evidence of the witnesses to the capture leaves no doubt of his guilt. The villagers got together, in sufficient numbers, to make head against the retreating dacoits, and secured the prisoner, who had fallen into a *nullah*, loaded with his plunder. The evidence of the witnesses, cited by the prisoner, is not favourable to him, and there is nothing whatever to support his statement that he wanders about the country begging and is subject to occasional derangement. The appeal is rejected and the sentence confirmed.

PRESENT:

A. DICK, ESQ., *Judge.*

GOVERNMENT AND MIRZA AGA HOSSEIN,

versus

SAHEB ALEE KHAN, DAGGEE.

Moorshedabad.

1854.

September 12.

Case of SAHEB ALEE KHAN DAGGEE.

The prisoner, an old offender, was convicted of burglary and theft, and sentenced to ten years' imprisonment.

Appeal rejected.

CRIME CHARGED.—1st count, burglary in the house of Hoseneo Begum, the prosecutor's daughter, from which property to the value of Rs. 569-2 was stolen; 2nd count, knowingly receiving and possessing the stolen property, acquired by the said burglary.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 21st July, 1854.

Remarks by the sessions judge.—The prisoner was arrested on the road by Ramtuhal chowkeedar, in the latter part of the night, in which the burglary was committed in the house of the daughter of the prosecutor. He was struggling with the chowkeedar, when the witnesses, Hajee Peerbux and Bheekaree, came to his rescue and secured his arrest. A portion of the stolen property (Nos. 1 to 10,) was found on his person at the time, and recognized by the prosecutor.

The prisoner is a notorious character; has been twice before imprisoned, once for three and the 2nd time five years for a similar crime, and he committed this burglary only about a month after his release from jail. • He is, I have no doubt, a professional burglar, and in concurrence with the *futwa* of the law officer, I convicted him of burglary and theft upon strong presumption, and sentenced him as an incorrigible offender to ten years' imprisonment in banishment with hard labor in irons, and to pay a fine of Rs. 530, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) The Court see no reason for interference with the sentence passed on the prisoner, petitioner. He was utterly unable to prove the allegations in his defence. The Court observe that the sessions judge has added a fine to the sentence under Act XVI. of 1850, amounting to the alleged sum stolen and not recovered, without however recording on what evidence he concluded that property to that amount had really been stolen.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND RUNGLALL SHEIKH,

versus

GUNNA HARI (No. 1,) JIBUN HARI (No. 2, APPELLANT,) NUDEAR CHAND BAGDI CHOWKEEDAR (No. 3, APPELLANT,) GAYRAM HAZRA (No. 4, APPELLANT,) DWARKANATH POAEE (No. 5, APPELLANT,) GOPALL HARI (No. 6, APPELLANT,) AND BONOMALI POAEE (No. 7, APPELLANT.)

East Burdwan.

1854.

September 13,

Case of JIBUN HARI and others.

Prisoners convicted of dacoity by the sessions judge on mere evidence to identity, were acquitted on appeal under the very questionable character of the evidence.

CRIME CHARGED.—Dacoity with wounding.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 26th July, 1854.

Remarks by the sessions judge.—The prosecutor's house was attacked by dacoits on the night of the 15th Jeit last, (27th May, 1854). He was ill-treated by the dacoits, and one of them wounded him on the foot with a *koolharee.* His property, to the amount of some 88 Rs., was carried off. The cries of the plaintiff attracted his neighbours to his house, and by the light of the torches, the prisoners were recognized among the dacoits. The houses of the prisoners are but a short distance from that of the prosecutor's in a neighbouring village, the houses being almost within sight of each other. Intimation was sent to the thannah of Balkishun on the night of the dacoity, and the darogah visited the spot the following morning, and he apprehended the prisoners in consequence of the prosecutor and his neighbours stating that they distinctly recognized them among the dacoits. Their houses were searched, but no property found. On prisoner, No. 1, Gunna Hari being apprehended, he confessed to having assisted in the dacoity and named as his accomplices prisoners, Nos. 2, 3, 4, 5 and 6. The proof of guilt chiefly rests on the fact of the prisoners being recognized by the prosecutor and his witnesses at the time of the dacoity; though I am aware that such evidence is frequently open to suspicion, yet in this case, I put full confidence in the statements of the prosecutor and in those of the villagers, who assembled round his house while the dacoits were plundering his property, and I convict the prisoners of the crime charged. Prisoner, No. 1, Gunna Hari, was before apprehended in a case of dacoity, but was acquitted on trial at the sessions. He was recognized by the prosecutor and witnesses, Nos. 1, 2, 3, 4 and 5, and he confessed

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before the police and before the magistrate. Prisoner, No. 2, Jibun Hari, was recognized by the prosecutor and by witnesses, Nos. 1, 2, 3, 4 and 5, and named in the mofussil and foujdary confessions of prisoner No. 1. Prisoner, No. 3, Nudear Chand Chowkeedar, was recognized by the prosecutor and witnesses, Nos. 1, 2, 3, 4 and 5, and was named in the confessions of prisoner No. 1. Prisoner, No. 4, Gayram Hazra, was recognized by the prosecutor and witnesses, Nos. 1, 2 and 3, and was named in the mofussil confession of prisoner No. 1. Prisoner, No. 5, Dwarkanath Poaee, was recognized by the prosecutor and witnesses, Nos. 1, 2 and 3, and named in the confession of prisoner No. 1, before the darogah. The same proof is against prisoner, No. 6, Gopal Hari Chowkeedar, and the prosecutor and witnesses, Nos. 1, 2 and 3, recognized prisoner, No. 7, Bonomali Poaee. Prisoner, No. 1, declines calling any witnesses in his defence. The witnesses named by the other prisoners fail in establishing any points in their favor. They speak to the prisoners being in their own village after the occurrence of the dacoity, but as the distance between the villages is only a quarter of a mile, such evidence availeth nothing.

Sentence passed by the lower court.—Prisoners, Nos. 2, 4, 5 and 7, to eight (8) years' imprisonment each, with labor in irons, and prisoners, Nos. 1, 3 and 6, to ten (10) years each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) There is nothing to convict the prisoners in this case, but the evidence of the neighbours, who swear to the identity of the accused. No property was discovered, and though one of those accused confessed to having taken part in the robbery, he could give no information of any kind regarding the concealment of the plunder. This man, however, has not appealed.

As the evidence of the eye-witnesses appears on the record, it is positive and direct enough against the prisoners, but there are circumstances which have attracted our attention connected with the inquiry, and affecting the probability of the statements before us, which shake our confidence in the witnesses, and induce us to acquit the prisoners of the charge.

It appears that all the prisoners reside within a short distance of the spot, where the robbery was committed, and were well known to the prosecutor and neighbours and other inhabitants of the village, yet they are represented as having joined the gang, who committed the dacoity, without taking the precaution of disguising themselves in any way, and fearlessly exposed themselves to the gaze of the villagers under the glare of *ten* lighted torches, yet no attempt was made to follow them, nor did the police arrest any one of them till the third or fourth day after the occurrence. This is the most unaccountable part of the case.

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Case of JIBUN HARI and others.

The darogah arrived at the village on the 28th May at midday, and reports having heard the names of the accused on that date, yet delayed to apprehend them till the 30th and 31st of the month, merely remarking that much difficulty had been encountered in finding them, but he did not explain in what the difficulty consisted, nor is there a single witness in the calendar to speak to the arrest of the prisoners. Finding therefore grave matter for doubt and nothing whatever to support the evidence of the eye-witnesses, we hesitate to trust to it alone and acquit the prisoners.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

SHEIKH DOWLUT (No. 11,) NAZEEM KHAN (No. 12,) SHEIKH AZUM (No. 14,) MAHOMED NAZEEM (No. 15,) SHEIKH LAICHA (No. 16,) SHONAM KHAN (No. 17,) MOTEE KHAN (No. 18,) MEEROO PATTAN (No. 19,) SOOBUL DOSS (No. 20,) SHEIKH BEESHA (No. 21,) ASHKUR KHAN (No. 22,) SHEIKH HOSSEIN (No. 23,) AND BOSHARUT KHAN (No. 24.)

Mymensingh.

1854.

September 13.

Case of SHEIKH DOWLUT and others.

Prisoners convicted of mutual affray in which a man was wounded and subsequently died, sentenced by the sessions judge to four years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Mutual affray, in which Kumurooddeen Milkee was killed.

CRIME ESTABLISHED.—Mutual affray, in which Kumuroodeen Milkee was killed.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 22nd May, 1854.

Remarks by the sessions judge.—It appears from the record of commitment and the evidence recorded on the trial, that there existed a previous dispute between Sunkur Sircar and Reaz Milkee (brother of deceased) regarding their respective shares in Kismut Chittoleeah, and that they had retained *latteals* for the purpose of making collections by force and oppressing the riots of the village, and a breach of the peace being apprehended, it was reported to the police (by prisoner, No. 13, of the acquittal statement) and two burkundazes (witnesses Nos. 12 and 13,) deputed to prevent it, but before they arrived at the spot, the parties had already met near prisoner No. 13's house, armed with *lattees*, *sulfees*, sword, &c., for a fight; the retainers of Reaz Milkee having proceeded out of his house (which is near) on seeing the *latteeals* of Sunkur Sircar coming towards them,

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the respective parties then began to pelt each other with clods of earth, but Reaz Milkee's party was driven by Sunkur Sircar's to Reaz's house, when the burkundazes arriving at the place, called out, "*pukro, pukro.*" On this Sunkur Sircar's party again attacked the adverse party and afterwards dispersed; the burkundazes, however, succeeded in apprehending prisoners, Nos. 19, 20 and 21, who were all armed, and as they were proceeding with these men to the thannah, it was rumoured that a man on the part of Reaz Milkee was wounded in the affray. This took place on the morning of Saturday, the 24th Poose last, corresponding with the 7th January, and the wounded man, Kumurooddeen (brother of Reaz Milkee) died in the evening from the effects of the injury he received. The civil assistant surgeon examined the corpse of the deceased, and deposed in this court that he found his death to have been caused by a penetrating wound passing through the lower part of the thigh from below, and on the inside passing upwards and outwards dividing the large artery, and the injury must have been inflicted with some long-pointed instrument with a cutting edge, such as the spear shown him. Prisoners, Nos. 11 to 18, were recognized as having taken an active part on behalf of Sunkur Sircar, and Nos. 19 to 24, on the side of Reaz Milkee, the deceased, being also among them. Prisoners, Nos. 19, 20 and 21, evidently *latteeals* by profession, both in the thannah and before the magistrate, stated that they came to Reaz Milkee's house for the purpose of entering into his service the night previous to the occurrence, and seeing Sunkur Sircar's people coming over the next morning, they were running away, when they were seized and disarmed, and ill-treated by them and made over to the burkundazes, but they did not wound the deceased, and that they heard that Sunkur Sircar's people had wounded him. The other prisoners one and all denied the charge, and set up an *alibi*, urging that they had been falsely charged by the adverse party from enmity. Nos. 11 to 18, added that they heard that when three persons were arrested, Reaz Milkee's retainers asked permission to rescue them and also asked for their wages, when a quarrel took place, and Reaz Milkee's own retainers wounded his brother, the deceased, and went away. No. 22, added that he was only witnessing the fight at a distance and had no weapons in his hand and Nos. 23 and 24, that they gave evidence in Reaz's favor and therefore they were charged by Sunkur Sircar's party. But the witnesses for the prosecution, who witnessed the affray, made no mention of Reaz Milkee's own men having wounded deceased. The evidence of the witnesses for the defence, I concurred with the law officer, was open to suspicion and not sufficient to exculpate them. The prisoners' vakeels pointed out certain minor discrepancies in the evidence of the witnesses. But the main point that an affray took place between both parties, in

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which the prisoners were recognized to have taken an active part, and in which deceased received a wound, which caused his death, has been fully established, though it was not shewn by whom the fatal blow was inflicted.

The *futwa* of the law officer found the prisoners guilty of the crime charged, in which I concurred.

Sentence passed by the lower court.—To be imprisoned without irons each for the period of (4) four years from the date of sentence, and to pay a fine of fifty (50) rupees on or before the 22nd June, 1854, or in default, to labor until the fine be paid or sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) There is abundunt proof that a mutual affray took place, though it is not so clear how Kumurooddeen met his death from a spear wound, if only clods of earth were thrown; the probability is, that the Milkee's house was attacked by the other side, and that Kumurooddeen in the attack received the wound which proved so immediately fatal.

Mahomed Ismail appeared for Sunkur Sircar's party, but he only endeavoured to establish some discrepancy in the evidence of *one* of the witnesses, a matter, where so many have deposed to the same facts, of very trifling importance.

We see nothing to call for the interference of the Court, and therefore reject this appeal.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

BUKSHEE ABKAR (No. 1,) MEGHOO (No. 2.)

Behar.

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Case of BUKSHEE ABKAR and another.

One prisoner acquitted, as the acts charged against him, did not constitute accessaryship.

CRIME CHARGED.—Prisoner No. 1; 1st count, forgery of a receipt No. 320, dated 12th December, 1853, for rupees 56, on account of Abkaree revenue due to Government; 2nd count, forgery by alteration of a receipt No. 302, dated 30th December, 1853, for rupees 28 on the aforesaid account; 3rd count, forgery, by alteration of a receipt No. 4010, dated 11th January, 1854, for rupees 29 on the aforesaid account; 4th count, knowingly possessing and fraudulently issuing and publishing as true, the two above described receipts of the 1st and 2nd counts before the Collector of Behar, on the 20th day of February, 1854, well knowing them to be forgeries at the time, with a view to defraud the State; 5th count, knowingly possessing and fraudulently is-

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suing and publishing as true the above described receipt of the 3rd count before the collector of Behar, on the 20th day of February, 1854, well knowing it to be a forgery at the time, with a view to defraud the State. Prisoner No. 2, 1st count, accessary before and after the fact with prisoner No. 1, in the aforesaid first and second counts; 2nd count, accessary before and after the fact with prisoner No. 1, in the aforesaid fourth count.

CRIME ESTABLISHED.—Prisoner No. 1, 1st count, knowingly possessing and fraudulently issuing and publishing as true the two above described receipts of the 1st and 2nd counts of the crime charged, before the Collector of Behar, on the 20th day of February, 1854, well knowing them to be forgeries at the time, with a view to defraud the State; 2nd count, knowingly possessing and fraudulently issuing and publishing as true the above described receipt of the 3rd count of the crime charged, before the Collector of Behar, on the 20th day of February, 1854, well knowing it to be a forgery at the time, with a view to defraud the State. Prisoner No. 2, accessary before and after the fact with prisoner No. 1, in the aforesaid 1st count.

Committing Officer.—Mr. H. Davis, officiating deputy magistrate of Sherghotty.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 14th June, 1854.

Remarks by the sessions judge.—Bukshee Abkar, prisoner No. 1, was a liquor vender at Imamgunge, pergunnah Sherghotty, paying the Government tax under seer management to the tuhsildar, Nuthoo Khan, witness No. 1, who is at present under suspension. Bukshee in reply to demands for arrears of tax petitioned the collector on 20th February last, representing "that none were due from him inasmuch as he had paid up nearly 14 or 15 rupees for February, itself inclusive," and at the same time in proof thereof filed seven receipts as obtained from the tuhsildar of different dates between September 1853, and 11th January, 1854. On investigation and examination, the collector found three of these seven receipts to be either entirely forged or forgeries by alterations, viz. entirely forged No. 320, 12th December, 1853, for rupees 56. Forgeries by alterations No. 302, 30th December, 1853, for rupees 28, altered from rupees 18. Forgeries by alterations No. 4010, correctly 410, 11th January 1854, for rupees 29 altered from rupees 18; and expressing his opinion that the tuhsildar's suspension had been taken advantage of to pass off these false receipts, transferred the case for trial to the deputy magistrate of Sherghotty, whence, accordingly, the commitment under trial.

Nuthoo Khan, witness No. 1, and Rampershad Lal, abkaree mohurrir, witness No. 2, depose to the forgery and the forgeries by alterations and their testimony is corroborated by the office account books and a copy receipt book duly kept up.

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All the receipts are written in the Persian character, but an entry in Hindee of the amount receipted, appears in each as is said for the payer's satisfaction. Witnesses 3 to 6, are entered in the calendar in proof or disproof of Bukshee's ability to read and write Hindee. Their testimony is either negative or indifferent, but any particular proof in this respect, seems immaterial, since if Bukshee's own admissions did not establish the fact, it is impossible to hold him ignorant of the real contents of receipts of such a nature as held by him so many months, whether written in the Persian or in any other ordinary character.

Meghoo Gorahit, prisoner No. 2, is the recorded bearer of the two receipts, Nos. 320 and 302, and has always pleaded to his delivery of their forged amounts.

On the 21st February last, Bukshee told the collector that originally all the receipts were clearly (*saf*) written and that he had shewn them to one Nowneed Lal, who told him, he had nothing to pay. Repeated search has been made for this person, but he has never been forthcoming. On the question following as to the extraordinary alterations in the receipts themselves, he replied that only five days previously he had shewn them to Nuthoo Khan, witness No. 1, who then himself altered them, and no one was then present. On being further questioned how in that case the state of his account admitted of Nowneed Lal's having told him he had nothing to pay, he replied, Nowneed Lal knew he did not. He adopted the same kind of defence before this court, calling one witness* to his having made over rupees 56 of receipt No. 320 to Meghoo Gorahit for delivery, although this is at variance to his statement before the collector that Teloo of Imamgunge was also then present; Teloo was not forthcoming and Sheo Churn has denied his having been present on the occasion. To his having paid rupees 29 on account of the receipt No. 410, in person, in the presence of the within witnesses,† who before the collector knew nothing about it, but before the deputy magistrate and this court trimmed their testimony according to the prisoner's statement. To Nuthoo Khan's having altered the receipts Nos. 302 and 410 in the presence of the within witnesses,‡ at variance to the prisoner's own statement to the collector that no one was then present, together with the solitary testimony of his relative, Bukshee, witness No. 12, to his having paid rupees 28 on account of receipt No. 302, to Meghoo Gorahit for delivery, finally argued at length on his inability to forge and attempted to tra-

* Witness No. 9, Sheo Churn of Imamgunge.

† No. 10, Nundoolal
,, 11, Toorab Alli.

‡ No. 7, Nirmullee Kullal.
Juhroo Kullal.
Neeoor.
,14, Boolakee Abkar.

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duce Nuthoo Khan's, witness No. 1's character, which however, he has not succeeded in injuring under cross-examination.

The jury* unanimously convict Bukshee Abkar, prisoner No. 1, on the fourth and fifth counts and Meghoo Gorahit on the second count, under which each respectively stand committed.

* Moulvee Golam Kadir Khan, *vakeel* additional moonsiff's court.
Dawur Hosein, *vakeel* of principal *sudder* ameen's court.
Cheydee lal Muhajun.
Mukhun Lal ditto.

The witness in chief Nuthoo Khan's official conduct is under investigation, on suspicion of embezzlement, on information apparently given by the second witness, his mohurrir, Rampershad lal; yet the collector has recorded his opinion that the opportunity has been adroitly seized to utter these forgeries. Nothing has transpired during the present trial to the prejudice of either of these two witnesses, and the pending investigation in no degree concerns the present trial. The testimony of these two persons has been straightforward, consistent throughout, and stands amply corroborated by office records, which under the circumstances of the case, it is impossible could have been tampered with in any way. On the other hand, the repeated inconsistencies, contradictions and gross improbabilities of the prisoner Bukshee's statements, supported as above shewn, only partially by as worthless witnesses, are self-convicting, whilst the forgeries themselves, face themselves with proof of their own spuriousness. No. 320, the entire forgery is for a larger amount than had ever been previously or subsequently paid by the prisoner, Bukshee, viz. rupees 56, whilst those of the preceding receipts ran only from rupees 5 to 14. It purports to bear Rampershad Lal, the mohurrir's signature only, whilst all the other recent receipts bear both Nuthoo Khan's seal and signature. It was possible for a receipt of this kind to have been given by Rampershad during Nuthoo Khan's absence, but it was customary to have a receipt of this kind compared subsequently, which the prisoner, Bukshee, never troubled himself to have done, notwithstanding the unusually large amount thus risked by him. It is dated 12th December and registered No. 320, whilst the subsequent receipt of 30th December following, both held by him up to the date of his complaint in February last, is registered only No. 302. The office register corroborates the correctness of the latter number and the forgery of the former one, and shews the real numbers registered on the 12th December last, as from Nos. 168 to 170 inclusive. Though an objectionable practice, yet prevailing throughout the country, the receipts being in the Persian character still do not favor the prisoner's pretences. The amount of each receipt is entered in Hindee characters in each of the seven receipts filed by him and have been equally altered in the altered receipts, Nos. 302 and 410. Of the amount of each receipt therefore this prisoner must have been cognizant

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from the first, which at once exposes the hollowness of his pretence of his having shewn them to Nowneed, even of his own self-contradictory statements in this respect did not amply prove it.

The alterations on the altered receipts, Nos. 302 and 410, are palpably visible and their real amounts stand fully vouched for, by the alterations themselves, as well as the corresponding office record.

The same judgment necessarily convicts Meghoo, prisoner No. 2, as the recorded and acknowledged bearer of the two receipts, Nos. 320 and 302.

Concurring, therefore, in the verdict by the jury, and regarding the offence as a singularly daring one, the prisoners have been sentenced as below.

Sentence passed by the lower court.—Prisoner No. 1, seven (7) years' imprisonment; prisoner No. 2, three (3) years' imprisonment, both with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) We see no reason to interfere with the conviction and sentence passed upon prisoner No. 1, the evidence fully establishes his guilt.

Prisoner No. 2 is convicted by the sessions judge of accessaryship before and after the fact. He is said to have been the recorded bearer of the two receipts Nos. 320 and 302, and to have always pleaded to the delivery of their forged amounts. He only made statements favorable to the prisoner, but such an act cannot constitute accessaryship. If his statements had been on oath, he might have been tried for perjury if they were false. He must be released.

Further note by Mr. Dick.—I would add in further elucidation of the above finding, that the assistance given by Meghoo to his principal, Bukshee, by declaring that he had paid in 56 rupees and 28 rupees was not such an assistance as constitutes accessaryship, and is referred to in Circular Order No. 8, 7th June, 1847. He did not participate in, or abet in the commission of the forgery, or publication of it, so as to be guilty of accessaryship before the fact; nor did he assist the felon to escape after the fact. His evidence no doubt would have assisted the defence materially if true; but if false and disbelieved, would not; and he might have been committed for a very different offence, perjury.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

JIBLAL SINGH.

Bhaugulpore.

1854.

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Case of JIBLAL SINGH.

Prisoner convicted of knowingly uttering a forged document, sentenced to five years' imprisonment.

Appeal rejected.

CRIME CHARGED.—1st count, forgery of a deed, dated 5th Jeth, 1258, F. S.; 2nd count, uttering knowingly the above forged deed for his own benefit.

CRIME ESTABLISHED.—Knowingly uttering a forged document for his own benefit.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th July, 1854.

Remarks by the sessions judge.—The prisoner pleads not guilty.

This case arose from a summary suit on part of Motee Singh, Moostagir of Bunseepore, against Hooblal Singh and Jiblal Singh, cultivators, for rent of their cultivation, in which they produced a *perwannah*, purporting to have been issued by Raja Bydianund Singh to Ram Suhai tuhseeldar, granting a perpetual lease of the lands in question at a fixed rate of seventeen annas the beegah. This *perwannah* is dated the 5th of Jeth 1258, corresponding with the 20th of May, 1851. It is proved in evidence that the seal attached to the *perwannah* is not that of Raja Bydianund Singh, though evidently intended as a clumsy counterfeit of it. It is further proved that the Raja was not in the habit of sealing *perwannahs*, but always signed them in Tirhootia Hindee character. The main evidence of fraud however is in the fact proved by all the witnesses that the Raja died on the 19th of Chyte, 1258, F. S. corresponding with the 5th of April, 1851, whereas the *perwannah* is dated on the 5th of Jeth following, or a month and a half after the Raja's death.

The prisoner offers no defence, acknowledges having presented the document to the collector and upholds its authenticity, saying he received it at the hand of one Dhurmoo Khidmutgar, and gave a buffalo and a rupee in consideration. He calls no witnesses.

The jury bring in a verdict on the 2nd count of the indictment, and find the prisoner guilty of uttering knowingly the forged deed in question for his own benefit, in which I concur.

There is nothing to prove how or when the deed was forged, but there can be no doubt of its forgery or of the motive induc-

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ing its presentation, its being uttered by prisoner, as stated, is admitted by himself, while its being so to secure a lasting lease at a very favorable fixed rate is clear on the face of the proceedings. The crime is easy of accomplishment, a common occurrence and most injurious to the landed interest. I sentence the prisoner to five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) There is no doubt the document is a forgery. It has been uttered by the prisoner and is for his benefit. Under these circumstances, as the prisoner has failed entirely to establish the fact pleaded by him that he innocently received it, the presumption of his guilt is full and conclusive, and we therefore reject his appeal.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND SHEIKH BOODHOO,

versus

SHEIKH NOORBUXSH.

Dacca.

1854.

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Case of SHEIKH NOORBUXSH.

The prisoner's appeal was rejected, the evidence against him being satisfactory.

CRIME CHARGED.—Attempting to murder his wife, Mussumut Najoo, and inflicting several dangerous wounds on her person with a *dao* or some other weapon.

CRIME ESTABLISHED.—Attempting to murder Mussumut Najoo and dangerously wounding her.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 13th July, 1854.

Remarks by the sessions judge.—The prisoner's wife and three other eye-witnesses* deposed, that at 3 or 4 o'clock on the morning of the *shubiberat*, the prisoner, who had been for some time before on bad terms with his wife, quarrelled with her, and with a *dao* wounded her very severely and ran out of the house.

* Nos. 1, 2, 3 and 4.

This evidence was confirmed by three witnesses, Nos. 9, 10 and 11, who came out of their houses on the alarm being given, and saw the prisoner running with a *dao* in his hand.

The civil surgeon deposed to the nature of the wounds, which he said were of a very dangerous character. The prisoner was also wounded, but Dr. Green, thought these injuries might have been inflicted by himself.

The prisoner pleaded *not guilty*, and told improbable stories at the thannah, before the magistrate and in this court, of his hav-

ing been outside the house, and heard a cry inside, when he ran away. In many particulars, these stories differed one from the other and could not be credited.

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September 15.

Case of SHEIKH NOORBUXSH.

The law officer convicted the prisoner of the crime charged.

I concurred in the verdict, and considering the desperate nature of the attack, sentenced the prisoner to fourteen years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The evidence being clear and satisfactory against the prisoner, the Court reject his appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

SHEIKH GOLAB,

versus

ZYNUDDEEN.

Tipperah.

1854.

September 15.

Case of ZYNUDDEEN.

The prisoner convicted of aiding and abetting in culpable homicide was acquitted in appeal.

CRIME CHARGED.—1st count, aiding and abetting in the wilful murder of Aynuddeen, alias Anoo, son of the prosecutor; 2nd count, aiding and abetting in the wounding of Mahomed Ameer; 3rd count, riot attended with the murder of Aynuddeen, and wounding of Mahomed Ameer.

CRIME ESTABLISHED.—Aiding and abetting in the culpable homicide of Aynuddeen alias Anoo.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 28th April, 1854.

Remarks by the officiating sessions judge.—The prisoner Zynuddeen, son of Dowlut, was committed to the sessions charged with, 1st, aiding and abetting in the wilful murder of Aynuddeen, alias Anoo, son of the prosecutor; 2nd, aiding and abetting in the wounding of Mahomed Ameer; 3rd, riot attended with the murder of Aynuddeen and wounding of Mahomed Ameer.

The prisoner pleaded *not guilty.*

This man was one of the number of persons stated to have been concerned in the case of riot attended with the death of Aynuddeen, *alias* Anoo, son of Sheikh Golab, which occurred at mouzah Chandpore. The circumstances which led to this affray, that had so disastrous a termination, have been already fully detailed by the late sessions judge, Mr. Metcalfe, in his report of the case, dated the 28th March, 1853. The deceased, it appears, had on the morning of the occurrence of the riot, gone with some others, to cut the rice crop on the land cultivated by one Doolun, a resident of Chandpore. On this, the zemindar's people

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in large numbers assembled and interfered, declaring that the crop had already been attached by the landlord's agents. On this a dispute arose, in the course of which the zemindar's people, who were all variously armed, violently assaulted the plaintiff's son and those who were with him, and in the course of the affray the former received a thrust in the groin from a lance (*raebans*) from the effect of which he died on the spot almost immediately afterwards. A man, of the name of Mahomed Ameer, also was injured by a blow from a *lattee*, though not very dangerously.

The case was clearly proved by the evidence of four witnesses, who were on the spot, and saw distinctly every occurrence. There is nothing whatever in the case to throw doubt upon the validity of their testimony, which was consistent throughout from the first.

The prisoner pleaded in his defence, that on the day of the occurrence in question, he was engaged in cutting the crop of the field of a man named Noorbuxsh, at a spot situated about five hundred yards from the scene of the affray, proffering the evidence of two witnesses in support of his alleged absence. But their evidence, even if supposed to be trustworthy, could be of little or no avail to prove the prisoner's innocence, unless it could be supposed that they had constantly had their eyes upon him; and the distance between the two places, was so short that a run of two minutes either way, would have sufficed whether to reach the spot or to return. Only *one* of these witnesses, it is also proper to be observed, was at work (or states he was at work) IN THE SAME FIELD with the prisoner. Indeed this man himself states that the prisoner, *had gone near to witness the disturbance*, but had not actually taken part in the affray. He further owns, that his own son is an intimate friend (*bundhoo*) of the prisoner, being in fact, as such, little less than a member of his family; such evidence in itself little trustworthy, could never counterbalance the direct and positive testimony of the witnesses, who saw the prisoner aiding and abetting in the affray, and positively swore to his identity.

In conformity with the *futwa* of the law officer, I passed sentence upon the prisoner of three years' imprisonment, in lieu of labor to pay a fine of 50 rupees, in failure of payment of which within a period of fifteen days to hard labor during the term of his imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The defence set up by the prisoner is, that he was engaged cutting the crop on the field of a man named Noorbuxsh, near the place where the riot occurred, and was not himself engaged in it; this statement is supported by Noorbuxsh himself and other witnesses cited for the defence, who depose that the prisoner merely went to see what was going on when the affray took place, this accords with the statements

of the three witnesses for the prosecution, who all agree that the prisoner was standing apart unarmed, and did not take any part in the quarrel. Under these circumstances we consider the prisoner fully entitled to his acquittal and direct his release.

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PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

GORACHAND ALIAS GREEDHUR CHUNG (NO. 1, APPELLANT,) AND DHONYE MANJEE MOSSULMAN (NO. 2.)

Hooghly.

1854. September 16. Case of GORACHAND alias GREEDHUR CHUNG and another.

Conviction and sentence passed on the prisoner in a case of dacoity, upheld in appeal.

CRIME CHARGED.—1st count, prisoner No. 1, dacoity in the house of Jeetoo Nikarree, at Doomordah, on the night of the 12th October, 1852, in which property to the amount of rupees 514-1, was plundered; 2nd count, prisoner, No. 2, having been privy to the above dacoity before, during, and after the fact; 3rd count, prisoners Nos. 1 and 2, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 26th April, 1854.

Remarks by the officiating additional sessions judge.—The prisoners were committed by the commissioner for the suppression of dacoity and are charged severally with dacoity, privity thereto and having belonged to a gang of dacoits. The dacoity charged was committed about two years ago at Doomordah in the house of Jeetoo Nikarree. The gang embarked in two boats from Bagh Bazar, Calcutta, and took in reinforcements at Baranagore and Teliniparah. They moored at Bhatparah the first day, and made *Gustea* the following. Here they made their preparations and some of the leaders went across the river to reconnoitre. On their return *Kali pujah* was performed and the gang crossed over in their boats. About midnight the attack was made. The terrace of the house was mounted by means of a bamboo used as a ladder, the outer gate was opened and the gang admitted, who lighting their torches, plundered the premises. The prisoner, Gorachand alias Greedhur Chung, No. 1, kept guard outside, while the plunder was going on, and the prisoner, Dhonye Manjee Mossulman, No. 2, remained in charge of the boats, one of which had been furnished by him. These facts are proved by the five approvers on the dacoity commis-

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sioner's establishment examined on the trial, whose evidence is to be relied on in all respects. Jeetoo Nikarree, proves the fact of the dacoity charged. The prisoners decline to make any defence and none of the witnesses named by the prisoner, Dhonye Manjee, presented themselves for examination.

Sentence passed by the lower court.—Prisoner No. 1, imprisonment with labor and irons in banishment for fourteen (14) years, and in lieu of corporal punishment, two (2) years more, in all sixteen (16) years; prisoner No. 2, imprisonment with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T Raikes.) The prisoner, No. 1, only appeals. He urges in appeal that the approver, Govind Sudgope, accused him in consequence of his having quarrelled with him about a woman, and had instigated the other approvers to implicate him in their confessions; that his witnesses were not summoned, had they been examined, they would have proved the enmity of the approvers and his own unblemished character.

We find this man admits having lived in Calcutta, with the approver, Govind, and when called upon for his defence made none, and neither named witnesses before the magistrate or the sessions court. We see no reason for interference and reject the appeal.

Rajshahye.

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September 19.

Case of ATTABDEE MUNDUL and others.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

ATTABDEE MUNDUL (No. 2,) NAZIR MUNDUL (No. 3,) AND SANKER MUNDUL (No. 4.)

Prisoners acquitted; the evidence against the prisoners being unsatisfactory and the articles found, being such as are commonly found in the houses of persons of the rank of prisoners.

CRIME CHARGED.—1st count, dacoity in the house of Haroo Mundul, attended with personal injury; 2nd count, knowingly taking and being in possession of property plundered in the above dacoity; 3rd count, privity.

CRIME ESTABLISHED.—Knowingly receiving property, plundered in dacoity.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 21st June, 1854.

Remarks by the sessions judge.—This, though called a dacoity with personal injury, was a simple one. The prosecutor was seized hold of by the dacoits, and one of them burnt his arm

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Case of ATTABDEE MUNDUL and others.

slightly with a *mussal*. He deposed to recognising four of the prisoners, and that No. 3 was the person who burnt him, but there was no other evidence to recognition. Property was found or traced to all three prisoners, which they, as well as the owner of the house, claimed, viz. Nos. 2 to 12 and 19 and 20, (two gold *nuths*) on No. 2, Nos. 14 and 15 (two *sarries*) on No. 3, and Nos. 16, 17, 22 and 23 on No. 4. The evidence for the prosecution establishing that nearly all the above property belonged to the prosecutor, I have convicted the three prisoners on the 2nd count, and sentenced them as herein stated. There were two searches made in the prisoner's houses. On the first, the darogah found nothing, and what was found was discovered by the acting darogah of thannah Mandah, who instituted the second search on orders received from the magistrate. The trial was held under Act XXIV. of 1843.

Sentence passed by the lower court.—Four (4) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) There are many circumstances to create doubt respecting the truth of the evidence against the prisoners No property was identified by prosecutor, when the prisoners' houses were first searched; and the articles which he declared to be his on the 2nd search, are such, every one of them, as are commonly found in the houses and families of persons such as the prisoners. The prosecutor, when he first deposed at the thannah, said he had been seized by two persons and burnt with the torch; he stated too that he recognized Nazir; yet did not say, as he afterwards testified, that Nazir was the person who burnt him. On the other hand, the prisoners all three bear good characters, and some of their witnesses have deposed to the property being theirs; in one instance, that of the *nuth* No. 20, remarkably so. The Court, therefore, not satisfied with the evidence against the prisoners, acquit them and order their release.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT,

versus

BANSHEE MOOCHEE.

Hooghly.

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Case of BANSHEE MOOCHEE.

On the prisoner denying in the sessions court his confession before the committing officer, that officer was allowed to give further evidence against him.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 24th August, 1854.

Remarks by the officiating sessions judge.—This case was tried under the provisions of Act XXIV. of 1843.

The prisoner was committed for trial by the commissioner for the suppression of dacoity, upon a charge of having belonged to a gang of dacoits.

Upon being sent to the commissioner, as a suspicious character, the prisoner voluntarily confessed to having been for years concerned in dacoities, in Nuddea and other districts, and gave full details of twenty-four cases, in which he had taken part.

He pleaded *not guilty* at the trial, and denied having made any confession before the commissioner or the deputy magistrate. The falsehood of this denial is however proved by the evidence of the witnesses, Nos. 1 and 2, in whose presence he confessed voluntarily, and without being subjected to restraint or persuasion of any description. From the circumstance of the confession having been made partly before Mr. Jackson, and partly before the deputy magistrate, there is a slight confusion in the statements of these witnesses, but it is not of a nature to affect the credibility of their testimony. The correctness of the confession is apparent from the fact, that the commissioner had no previous evidence against the prisoner, who is the first of his gang who has been apprehended, and the records of the cases detailed by him, which have been received from the magistrates, prove the dacoities to have taken place as represented by him. These include two dacoities, one committed at the house of Hurrochunder Bundopadyah, thannah Kaloopole, zillah Jessore, on the 20th August, 1849, the other at the house of Ramchurn Roy, in mouzah Gopalpore, thannah Maherpore, zillah Nuddea, on the 7th June, 1848, in both of which, the prisoner was apprehended. In a third case, which occurred on the 7th July, 1850, at the house of Gorachand Ghose, in mouzah Masdeh, thannah Hourah, zillah Nuddea, he named Nyan Sheikh, who is now an informer, as having been one of his accomplices, this dacoity is found similarly detailed in Nyan Sheikh's confession, made last February, but he did not name the prisoner. This informer was

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not entered as a witness in this case in the first instance, the prisoner's confession being so clear, as to render further evidence unnecessary; upon his repudiating it, however, the witness was admitted at the request of the Government pleader, upon the ground that the necessity of his testimony could not have been foreseen at the time of the commitment of the case, upon the principle prescribed by the Court's letter No. 762,* dated the 9th instant. He at once pointed out the prisoner as having been one of his accomplices in the dacoity, and stated that his name did not occur to him at the time he made his confession.

The prisoner was likewise named in another case, to which he has confessed, committed at the house of Ruzzun Bewah, in mouzah Dewangunge, thannah Hurdah, zillah Nuddea, on the 6th June, 1851. This case was reported as a burglary, but was at the time, suspected to be a dacoity. The records of the other cases now sent, which it is unnecessary to enumerate, tally generally with the confession.

The guilt of the prisoner Banshee Moochee being, in my opinion, clearly established by his voluntary confession before the commissioner for the suppression of dacoity and the deputy magistrate, which is corroborated by the original proceedings in the several cases, I convict him of the charge, and I have the honor to recommend that a sentence of transportation for life with hard labor in irons, be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The prisoners' confession before the committing officer is satisfactorily proved. It is also corroborated by the fact of his having named Nyan Sheikh, as an accomplice in the dacoity at Gorachand Ghose's house, on which account that person's evidence was taken on the prisoner's denial in the sessions court of his confession; and also by the fact of his having mentioned the dacoity in the house of Ruzzun Bewah, for which two persons were punished by this Court, on the 17th November, 1851.

We therefore sentence the prisoner as proposed by the sessions judge.

* Letter from the register of the Nizamut Adawlut to the officiating sessions judge of Hooghly, No. 762, dated 9th August, 1854.

I am directed by the Court to acknowledge the receipt of your letter No. 230, dated 27th ultimo, and in reply to observe that the committing officer can claim no *right* to send up witnesses, not originally named in the calendar, after the trial has been taken up by the sessions judge; but if either party (whether the prosecutor or the defendant), wishes during the course of the trial to produce further evidence of which, or the necessity of which, he either had no means of obtaining previous information, or which may have been subsequent to the commitment, discovered, or considered requisite, he may be permitted to bring the fact to the notice of the judge, who will for special reasons which must be placed on record, decide whether it shall or shall not be admitted.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND KUORNARAIN MYTEE,

versus

RADHAKISTO MYTEE.

Midnapore.

1854.

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Case of RADHAKISTO MYTEE.

The prisoner was sentenced capitally for murdering a child for the sake of its ornaments.

CRIME CHARGED.—Wilful murder, in having with a view to steal the ornaments from the person of Mussumut Onohmela alias Puchee, the daughter of the prosecutor (aged seven years), wilfully killed her.

Committing Officer.—Moulvee Wuheedoon Nubee, deputy magistrate, exercising powers of a magistrate, at Nugwa, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 28th August, 1854.

Remarks by the sessions judge.—It is in evidence that the deceased, daughter of the prosecutor, was married to the son of a person in a neighbouring village and returned to her father's house on the Monday preceding that on which the murder occurred, and, as is customary, the child continued to wear on her person the silver ornaments bestowed on her at the marriage ceremony; subsequent to her return home, the prisoner was in the habit of visiting frequently at the prosecutor's house and he spent nearly the whole day of the 24th July, in the company of the prosecutor and his daughter; at about 8 P. M. prisoner went away from the prosecutor's house, leaving the child asleep in her father's lap and shortly after a hue and cry was raised that a stack of straw, immediately in front of prosecutor's house, was on fire. Prosecutor went out, leaving his child asleep in the verandah, and was for some time engaged with his neighbours, who came to his assistance, in extinguishing the fire. On returning to his house, his daughter was missing, and his son, a child of three years of age, told him that a thief had come, in his (the father's) absence and carried away his sister. His suspicions immediately fell on the prisoner whom he taxed with the murder. The latter at first denied it, but expressed his readiness to join in the search that was then made. Prisoner, accompanied with others, proceeded with lighted *mussals* to look for the body. On arriving at a hole or pond to the north of the prosecutor's house, the prisoner called out that he saw something in the water and proposed that the others should examine what it was, alleging he was afraid to do so. Huree Mytee, the witness No. 14, then went into the water and discovered and brought out the body of the deceased child, in a state of nudity and stripped of all its ornaments. The prisoner, at the request

of the prosecutor, was then taken into custody by the witnesses, No. 1, and No. 9, to whom he admitted that he had assisted one Bulram Mytee in murdering the child, that he had tied up all the silver ornaments in a cloth and had hid them in a reservoir, from which place he afterwards took them and delivered them to the witnesses.

The prisoner confessed before the darogah and repeated his confessions in the presence of the deputy magistrate.

From the inquest held on the spot and the examination made of the body of the child by the native doctor, attached to the Nugwa division, it appears that there was a wound on the right side of the head above the ear, the blood was flowing from it and from the nose, that there was suffusion of blood between the scalp and cranium and extravasation of blood on the surface of the brain, which were quite sufficient to account for death of the deceased. The native doctor, whose evidence was taken in this court, is of opinion that the injuries were produced by some round blunt instrument, such as a log of wood, and that they might likewise have ensued from a fall or from beating the child's head against some blunt wooden substance. The body, he also stated, was in other respects in a healthy state. The confessions are borne out by a connected chain of circumstantial evidence, which raises the strongest presumption that the prisoner unaided, committed the deed, of which he is accused. 1st his frequent visits to the prosecutor's house from the time the child returned to her home to the day of her death, where he was in the habit of seeing the child wearing the silver ornaments, which no doubt excited his avarice and suggested the crime, which he afterwards committed, to obtain them. 2ndly, the bursting out of the fire in the straw stack immediately after his leaving the prosecutor's house on the Monday night, which there is good ground for supposing, was the act of the prisoner, to distract the attention of the prosecutor and his family in order to obtain access to the house and carrying off the child unnoticed. 3rdly, his being the first to perceive the fire and to communicate the information to the witness, Gunsam Mytee, No. 12, and his then absenting himself and not again appearing till the fire had been nearly extinguished by the exertions of the prosecutor's neighbours. 4th, his being the first to discover the body in the tank, and the repugnance he exhibited to assist in taking it out of the water. 5th, the foot mark on the banks of the tank close to the spot, where the body was discovered, which tallied exactly in its dimensions with the prisoner's foot, and lastly, his producing from the place where he had concealed them, the silver ornaments tied up in a cloth which belonged to him. I discredit that part of his statement in which he endeavours to implicate Bulram Mytee as an accomplice. It is established by the evidence of the witnesses that Bulram was present assisting to

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extinguish the fire from first to last, and there can be no question that the murder was committed whilst the stack of straw was burning. He could not therefore, if the evidence be true, have assisted the prisoner in the murder. It was, in my opinion, the prisoner's own premeditated, unassisted act, committed without accomplices or accessaries. In this court, he pleads *not guilty*, and in defence, that the charges preferred against him are unfounded from beginning to end, but he cites no witnesses in support of it. The assessors, with whose aid the trial was held, declared him guilty of wilful murder; in this finding, I concur. The murder was one of a malicious, cruel and deliberate nature, in which there is not a single mitigating circumstance that can be urged in extenuation; the prisoner has, in my opinion, justly incurred the extreme penalty of the law, and I would recommend accordingly that a sentence of death be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The evidence of the guilt of the prisoner is clear and conclusive. He pointed out the spot where the body of the murdered child was floating in the water. He feared to go and bring it out. He confessed to having consulted about the murder; to being present, when the child was carried off asleep; to stopping the child's mouth, while another stript off the ornaments; to the killing of the child by his accomplice, by beating its head against a log of wood; and he pointed out where the ornaments had been hidden, and brought them out wrapt up in a cloth of his own. A print of his foot was visible on the ground, where he stated the child had been stript of its ornaments and killed. The father of the child testified to his constant visits at his house from the time of the return of the child, from her father-in-law, wearing the ornaments; and especially on the day of the murder, which led to the father at once charging him, the prisoner, with the murder. Lastly, the person whom he mentioned as his accomplice in the murder is proved to have been all the time with the prosecutor, assisting in putting out the fire of the stack of straw. The Court, therefore, concur in convicting the prisoner of premeditated child-murder and sentence him, as recommended, to be hanged.

PRESENT:

J. DUNBAR, AND H. T. RAIKES., ESQS., *Judges.*

GOVERNMENT,

versus

MOHESH CHUNDER PAUL.

Nuddea.

1854.

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Case of MOHESH CHUNDER PAUL.

Prisoner convicted of perjury by the sessions judge, acquitted in appeal.

CRIME CHARGED.—Perjury in having on the 13th February, 1854, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Baboo Issur Chundur Ghosaul, deputy magistrate of Santipore, at Doorgapoor village, that "he recognised the prisoners, Gooroo Churn Paul and Kartick Doss, who were then present before him and pointed them out." And in having on the 20th April, 1854, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. J. E. S. Lillie, magistrate of Nuddea, that "he could not recognise the prisoners, Gooroo Churn Paul and Kartick Doss, who were then present before him." Such statements being contradictory of each other, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of Nuddea.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 29th August, 1854.

Remarks by the sessions judge.—This is a gross case of palpable perjury committed by the prisoner, a police mohurrir, who was under a peculiar obligation to speak the truth on a matter that occurred under his own observation, while in the discharge of his public duty. It appears that attended by burkundazes, he had been deputed to arrest certain parties. Suddenly they were mobbed and attacked. Prisoner was knocked down and was forcibly carried off and detained for many hours. The perjury consists in the conflicting depositions which before the deputy magistrate of Santipore and before the magistrate he made, as regards his identification of two men concerned in this outrage. To the deputy magistrate, he pointed out Gooroo Churn Paul and Kartick Doss, but to the magistrate, when shewn the same men, he said he did not recognise them.

The several depositions, as taken on oath, have been attested by the men who wrote them. Prisoner indeed admits the conflicting statements; but says that from the first, the men were strangers to him and that when they were shewn to him in the magistrate's office, they were mixed with so many others that he did not notice or had forgotten them. This defence

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seems to me a mere subterfuge. I can conceive him to have had some doubt in the deputy magistrate's court; but when once the men had been arrested and had been identified there, the circumstances of the case became far too prominent to have been lightly thought of. Besides, the witness, who wrote his second deposition, declares that the prisoner was required to look successively at the prisoners, six in all, to whom his attention was called. The simulated obliviousness seems to me false and wilful.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The statements in the two depositions, forming the grounds of the charge, are not in themselves conflicting. The prisoner, on the 13th of February, 1854, was confronted with the two individuals, whose recognition is referred to in this case, and then pointed them out as concerned in the outrage perpetrated upon him the day before. On the 20th of April following, he was again confronted with these persons, and then said he could not recognise them. His assertion of non-recognition, on the 20th April, was clearly intended to apply to the time present, and was no contradiction of the previous statement of the 13th of February. To constitute contradiction, it should have amounted to a denial that he had ever recognised the parties on the 13th of February. The indictment therefore does not, in substance, contain conflicting statements of the prisoner upon which a charge of perjury can be based.

We acquit the prisoner and direct his release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND SHEIKH MUNSOOR,

versus

SHEIKH NEZAM.

Dacca.

1854.

September 20.

Case of SHEIKH NEZAM.

Prisoner charged with wilful murder and other counts, acquitted, owing to the very suspicious circumstances attending the inquiry by the police, and the nonidentification of the body said to be that of the deceased.

CRIME CHARGED.—1st count, wilful murder of Mussumut Foolcoomaree; 2nd count, having in his possession some of Mussumut Foolcoomaree's ornaments, knowing them to have been obtained by the above murder; 3rd count, taking away Mussumut Foolcoomaree from her house, who has never since been seen alive, and having in his possession some of her ornaments and not being able to account for how he got them.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 23rd August, 1854.

Remarks by the sessions judge.—The deceased, Foolcoomaree, was a prostitute, and by the evidence of witnesses, Nos. 1 to 5,* was about the end of Falgoon, enquired for by two persons, Aubid Sircar and the prisoner. These men said, the naib at Madubpore wished to see deceased, and she went with them, locking up her house. As she did not return, suspicions of her death were excited, and her brother, the prosecutor, having heard that a corpse had been found in the Rowab-bheel, went to the thannah, and gave information of his sister being missing.

* No. 1, Mussumut Sohagee.
,, 2, ,, Moolook Jaun.
,, 3, ,, Juggut Tara.
,, 4, ,, Heera.
,, 5, ,, Neelmonee.

This corpse or skeleton, for but little remained besides the bones, was discovered in the Rowab-bheel, on the 14th March, 1854. It is said to be the body of Foolcoomaree, having been recognised as such, by two rings of brass and iron, which still remained on the fingers, Aubid Sircar and the prisoner were apprehended as the persons last seen in company with the deceased, when the prisoner produced from his house two small gold ornaments, and confessed participation in the murder. The ornaments were recognised as the property of the deceased. In the possession of Aubid Sircar, no property was found and he was released by the magistrate.

The prisoner confessed at the thannah, but denied his guilt before the magistrate and sessions judge. He called witnesses but nothing was established in his favor.

The law officer convicted the prisoner of being an accomplice in the culpable homicide of Foolcoomaree, and being in possession of the stolen property.

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I do not concur in the *futwa*, as if Foolcoomaree died, as there is reason to suppose, the crime was murder, not culpable homicide.

The evidence is open to much objection. In the first place, it may be doubtful whether the body found, was really that of Foolcoomaree. Some witnesses* say, they recognised it by two rings on the fingers. One† says one ring, while the *sooruthal* makes no mention of any. Still as there is no report even of any other person being missing, or lately deceased and placed in the *bheel*, it may be supposed, that the corpse was that of Foolcoomaree.

* No. 1, Mussumut Sohagee.
,, 2, ,, Moolook Jaun.
,, 3, ,, Juggut Tara.
,, 4, ,, Heera.
,, 5, ,, Neelmonee.
,, 16, Rutton Chung Chowkeedar.
† No. 15, Khan Mahomed Chowkeedar.

The prosecutor complained of the conduct of the police in not taking his deposition at once, but has no evidence of this, though there perhaps was some delay. At first, on 8th April, the witnesses, 1 to 5,‡ said, that Aubid Sircar and the prisoner had taken away the deceased. On the 12th, they said, they did not know Aubid well, and in the foujdary and in this court, they said, that Aubid had, with the prisoner, taken away the girl. Aubid Sircar as well as the naib, Sheebnath Gangolee, denied before the police they knew any thing of the matter, but to this denial, I attach little weight. The woman was, very probably, sent for as stated, and when not again heard of, these parties to avoid trouble, denied all knowledge of her. It is very possible, that having been dismissed from the house of the naib, she was murdered on her return home.

‡ No. 1, Mussumut Sohagee.
,, 2, ,, Moolook Jaun.
,, 3, ,, Juggut Tara.
,, 4, ,, Heera.
,, 5, ,, Neelmonee.

The principal evidence against the prisoner is the finding of the property in his possession. He denies he had it, and says he is at enmity with the naib, but of this there is no proof, any more than of ill-treatment by the police, for this, in fact, there was no time. The prisoner was pointed out, his house searched and his deposition taken, all on the 12th April. The body was found near the prisoner's house, also a material point.

The prisoner is of bad character. By the report of the record-keeper, it will be seen, that he was convicted on the 21st May, 1846, of an offence, which seems to have been robbery with attempt to murder, but for which the magistrate inflicted an unaccountably light punishment.

After well weighing the evidence, I am of opinion, that the discrepancies can be accounted for by the disinclination, natural to natives; to come forward in cases like the present, as Aubid Sircar and the naib Sheebnath Gangolee, have done; and the

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willingness of the other witnesses, especially those of low repute, such as Sohagee and others, to oblige any person of influence, from whom moreover, they seem to have occasionally derived profit.

I would convict the prisoner, on strong presumption, and on his confession at the thannah, on the 2nd count, charged and sentence him to imprisonment with labor for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The sessions judge justly takes exception to the *futwa* of the law officer. There is nothing whatever in the circumstances connected with the supposed death of Foolcoomaree, so far as they are disclosed in the evidence, which would justify a verdict of culpable homicide. But the finding of the sessions judge himself does not appear to us, either reasonable or consistent on the evidence, and the facts which he had before him. He convicts the prisoner on strong presumption, and on his own confession at the thannah on the 2nd count charged, that is, of having in his possession some of Foolcoomaree's ornaments, knowing them to have been obtained by the murder of the said Foolcoomaree; but if the evidence for the prosecution be credited, and if the confession be received as genuine, the prisoner's guilt must necessarily be of a much darker complexion than that assigned to it by the sessions judge, for it is in evidence that Foolcoomaree was enticed away from her home by the prisoner and another, and never seen alive again; while the confession clearly makes him out an accomplice in murder, setting forth as it does, that the prisoner joined in the scheme for inveigling the woman from her house, for the purpose of murder; that he stood by, while she was put to death by his associate, and that he then helped to dispose of the body, receiving part of the ornaments as his share of the booty.

From the very doubtful nature of the evidence, and the unsatisfactory manner in which the mofussil enquiry was conducted, we see much reason to mistrust the entire case for the prosecution, and to induce a belief that if Foolcoomaree has been made away with, means have been found to shroud the case in such mystery as to render it now impracticable to discover the real facts, so as to bring home the crime to the actual perpetrators. The case against the prisoner, Nezam, rests mainly upon his alleged confession. Apart from that confession, there is no reliable evidence to prove that the body found in Rowab-bheel, was that of Foolcoomaree. When first discovered, the *sooruthal* shews, that it was a mere skeleton, in such a condition, that it was impossible to say, whether it was that of a man or a woman. It was not till a fortnight afterwards that evidence to identification was given, resting in part on the recognition of one iron and one brass ring, said to have been seen on the fingers of the skeleton, which rings however were not then, and have never

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since been produced and are not even alluded to in the *sooruthal.* The confession bears in itself strong evidence of having been prepared to serve a purpose. Setting aside the general improbability of the statement alleged to have been made by the prisoner, which is itself opposed to those facts, regarding the disappearance of Foolcoomaree, which can be relied upon, the circumstances under which the confession was made and which led to the arrest of the prisoner are such as entirely to preclude confidence. The mohurrir had first gone into the mofussil, and after examination of the body, found in Rowab-bheel, could get no information as to the identity of the body or the cause of death. As cholera was abroad at this time, it was supposed, and naturally enough, in so populous a country, that this might have been one of its victims. The darogah then went out, and despairing apparently of getting any thing tangible in the usual mode of proceeding, he at last resorted to the expedient of collecting the whole of the inhabitants of all the villages, near Rowab-bheel, in order that the unknown individual, who was said to have accompanied Aubid, and taken away Foolcoomaree, might be pointed out. This was more than one month after her disappearance, and perhaps it is not to be wondered at, that in the hopes of getting rid of such a troublesome enquiry, the very witnesses, who had before said that Sheikh Aubid was one of the men who had taken away Foolcoomaree, but that they did not know the other, should then at once recognize Nezam as that other, and express their doubts as to Aubid having been with him, as they had before stated. In a confession, such as we have in this case, following immediately after recognition, identification and arrest, made under such circumstances, and at once repudiated, when the prisoner was brought before the magistrate, we can put no trust.

We acquit the prisoner and direct his immediate release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND BUDDUN CHUNG,

versus

MOHIMA CHUNDER DOSS (No. 1,) SUMBOO CHUNDER GHOSE (No. 2,) DOORGA DOSS DOSS (No. 3,) RAMDIAL AICH (No. 4,) PROBHOODEEN PARCH (No. 5,) BULORAM CHUNG (No. 6,) NITAYE SAZAWUL (No. 7,) DINIATOOLLA (No. 8,) AND JOOGUL CHUNG (No. 9.)

Backergunge.

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Case of MOHIMA CHUNDER DOSS and others.

Prisoners convicted by the sessions judge of riot attended with culpable homicide, sentenced to five years' imprisonment. Conviction upheld in appeal, but the Court noticed that the sentence was inadequate.

CRIME CHARGED.—1st count, wilful murder of Nobeen Chung; 2nd count, riot attended with the culpable homicide of Nobeen Chung, on the 8th March, 1854.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Nobeen Chung.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 24th May, 1854.

Remarks by the sessions judge.—*Chur* Surreecole was resumed by Government. It appears the deputy collector after measuring it, gave *pottahs* to all the ryots for their respective holdings. Subsequently, the *chur* was farmed to Gopal Lall Tagore in the name of his dependent, Neelmony Bose. The farmer is not satisfied with the jumma fixed upon the ryots by the deputy collector; they are obstinate and refuse to pay any increase.

This state of things between the farmer and his tenantry is an everlasting source of dispute, and the latter have wisely combined to support each other in their general quarrel. The prosecutor seems to have made himself conspicuous, on the side of the tenantry, by frequent complaints to the authorities against the oppression and extortion of the farmer, and it became a necessary policy to subdue him and bring him to terms, accordingly the prisoners appeared at early dawn before the prosecutor's house and demanded his surrender. Being seized, he was at once being carried off to the boat in which the prisoners had come, to be taken no doubt to some cutcherry of Gopal Lall's to undergo the usual discipline, so well known and so frequently resorted to by Bengali zemindars against such of their tenantry as have the temerity to resist extortionate demands. The prosecutor knowing, perhaps something of the nature of this discipline from personal experience, resisted being led off and his cries having roused his brother who lived in the same homestead, the latter ran and endeavoured to pull his brother away. He received a

1854. September 20. Case of MOHIMA CHUNDER DOSS and others.

blow for his interference, but still was man enough to cling to his relative. On this, and it is said by the command of the prisoners Mohima Chunder and Sumboo Chunder one of the prisoners, or one of their side, thrust a spear into the chest of the deceased from which after running or staggering a few paces, he fell down dead. The prisoners then hastened to their boat with a view to make off, but ere they could do this, the villagers assembled and headed by the chowkeedars of the villages apprehended all the prisoners, except prisoner No. 9, on board their boat as they were just pushing off from the shore.

The above particulars were fully proved by numerous witnesses,* examined at the trial. The evidence of the medical officer also establishes that the deceased died of the wound which the other witnesses prove he received from the hand of some unknown person on the side of the prisoners.

* No. 1 Kissen Mohun Bapary.
,, 2 Phoolmala.
,, 4 Ramkisto Chung.
,, 5 Ramkishore Ghoramy.

The police were immediately informed of the circumstance and arrived on the spot the same day. The prisoners were not of course without a story of their own and this was, that Mohima Chunder Doss (No. 1,) was going to his own home by boat, accompanied for the sake of protection by the prisoners Nos. 3, 4, 5 and 8. Having been directed by his superiors to tell Sumboo Chunder (No. 2,) the naib of Surreecole that some rent was immediately looked for from him, and Surreecole being on his way, he proceeded to that place and arrived there the evening before the occurrence. He delivered his message and was about to open his boat the next morning when, without any provocation on his part, the villagers assembled and plundered his boat and detaining him and his companions, prisoners, they concocted the countercharge of riot and murder, on which the prisoners are now arraigned.

All the prisoners made the above statement in their defence; the prisoners Nos. 6, 7 and 9 further attempted an *alibi*, affirming that they were in their own houses in Surreecole at the time.

The witnesses named by the prisoners to prove their version of the affair, have done so as far as words can prove it, but I discredit their testimony. The prisoners refused at the thannah to name any witnesses. Now if there had been, as they have since pleaded, at the same place several other boats at anchor, the passengers and men of which saw the alleged plunder, why were not these parties named to the darogah? They were independent witnesses and had there really been a plunder and they had been witnesses of it, the prisoners would not have failed to cite them and prove their innocence on the spot. Nay, considering the relative consequence and positions of the parties, the po-

lice would not have been shewn to find witnesses to prove the plunder of the prisoner's boat, had anything like such an incident really happened. In concurrence therefore with the law officer, I sentenced the prisoners as shewn in column 12.

1854. September 20. Case of MOHIMA CHUNDER DOSS and others.

Sentence passed by the lower court.—Imprisonment each with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The whole of the prisoners appeal, but without taking any special objections to the proceedings, and Mr. Norris, who appears on their behalf, admits that the Court have only to choose between the case for the prosecution and that which the prisoners have set up in defence. We see no reason to distrust the evidence, which is clear and consistent, and fully warrants the conclusions arrived at by the sessions judge, as to the guilt of the prisoners. Adverting to the aggressive nature of the attack, and the clear proof upon which this is brought home to the prisoners, the punishment awarded appears to us wholly inadequate.

PRESENT:

SIR R. BARLOW, BART., J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

GOVERNMENT,

versus

BAWOOL GHOSE.

Nuddea.

1854. September 22. Case of BAWOOL GHOSE.

Prisoner convicted by the sessions judge of knowingly receiving plundered property obtained by dacoity, acquitted in appeal.

CRIME CHARGED.—1st count, river-dacoity on the boat of the plaintiff, Ramprotap Singh, Churundar's master, in which property to the value of rupees 562-12-9 was plundered; 2nd count, knowingly receiving and having in his possession plundered property acquired by the above river-dacoity.

CRIME ESTABLISHED.—Knowingly receiving and having in his possession plundered property obtained by a river-dacoity.

Committing Officer.—Mr. George Hewett, deputy magistrate of Cutwa.

Tried before Mr. A. Sconce, sessions judge of Nuddea, on the 3rd August, 1854.

Remarks by the sessions judge.—The accomplices of this prisoner were on the 20th August, 1852, convicted of receiving and possessing the property plundered in this river-dacoity. This prisoner then disappeared, and has been recently arrested. It is clearly proved that he and others brought the plundered property, consisting mainly of umbrellas (78), for sale to Surbo Joogee, and that they sold them to the Joogee at one rupee each,

1854. September 22. Case of Bawool Ghose.

who at once paid the amount; prisoner denies the charge, but admits that three Chytes gone, he had left his home in Gotepatrah for Gobindpore. The sale of the plundered property occurred in Bysackh: and his witnesses say only that about two and half years ago prisoner came to Gobindpore.

Sentence passed by the lower court.—Seven (7) years' imprisonment and two (2) years in lieu of stripes, being in aggregate nine (9) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Mr. J. Dunbar, and Mr. H. T. Raikes.)

Mr. H. T. Raikes.—The evidence appears to me far from satisfactory, and I would acquit the prisoner appealing. He is charged with river-dacoity, and on a 2nd count, with receiving and having in possession stolen property. The circumstances of the case are these. The dacoity occurred on the 22nd April, the darogah could make nothing of it till an informer told him that Surbo Joogee and others, residing in Jogunathpore, were professional receivers of stolen property, and if the dacoits had parted with the plunder, it would be probably discovered in some of their houses. The darogah went there and heard from Nasseram Chowkeedar that Surbo Joogee, on hearing of the darogah's coming, had removed some property from his own house to his female cousin's, the darogah accordingly searched her house and found 78 umbrellas, which the Charandar of the plundered boat instantly recognized as part of the cargo of which he had been robbed. The woman informed the darogah that her cousin, Surbo Joogee, had brought all the umbrellas to her house in the middle of the night, and requested her to take charge of them, which she did. Surbo was then sent for and admitted he had placed them in his cousin's care, alleging that he had purchased them from the prisoner, Bawool Ghose, and three others, named by him publicly and in the presence of witnesses, whom however he then declined to name, stating that he would produce them before the magistrate. He was then sent to the station, his witnesses were examined on the 17th, but the magistrate not believing the defence set up and supported by Surbo Joogee's witnesses committed him for trial to the sessions. The sessions judge, however, considered the evidence of these men sufficient to clear Surbo, and he was acquitted on it. The magistrate then arrested the persons implicated by Surbo's defence and the statements of his witnesses, and the prisoner has been convicted solely on their evidence. Now it appears to me that if Surbo bought the plundered property as a professional receiver, he would never have transacted such business before witnesses or with the publicity he professes to have done, the credibility therefore of his two witnesses greatly depends upon the sort of character Surbo bears, whether he was likely to have acted in this matter as represented by them. There is no direct evidence to character on the

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Case of BAWOOL GHOSE.

record of this case, but it is patent on the proceedings that Surbo was first brought to the notice of the police in this case as an habitual receiver of stolen goods, and *stolen property* was traced to him. The fact of his removing that property on the approach of the police in the night time from his own house to another's, wears a very suspicious appearance, and though his account, regarding the property, is supported by the witnesses cited by him, those witnesses were not named or produced till many days after his apprehension. It does not follow that because these witnesses were deemed sufficient to remove the full presumption of guilt from Surbo, their evidence should be considered conclusive against the prisoner now before us, and as in my opinion the circumstances I have alluded to above throw considerable suspicion on Surbo Joogee in this affair of the property, I cannot place such reliance on their unsupported testimoney as to convict the prisoner upon it. His defence is not very consistent, but allowances may be made for a person in his position, and there is at least no proof to show that it is false and altogether unfounded. I would therefore acquit the prisoner.

Mr. J. Dunbar.—The evidence to prove that the prisoner and others sold the *chattas* to Surbo Joogee is very circumstantial, and I see no reason to distrust it, the less so, that the witnesses were not named by the purchaser, till he was arraigned before the magistrate, when being in durance, he was not in a position to exercise any undue influence over them. The prisoners disappeared at the time of the investigation, when the discovery of the property was first made. The way in which he accounts for this disappearance is not satisfactory. Before the magistrate, he said he had first gone to Gyah for a year and then on his return, resided at Gopalpore. At the trial he said that, about the time of the dacoity, he had absconded from Ghosepara, and gone to reside at Govindpore.

I consider the evidence sufficient to sustain the conviction, and would confirm the sentence.

Sir R. Barlow.—I do not think that the evidence of the witnesses, Potaie Sheikh and Neemoo Mullick, can be safely trusted. Some two years ago, when one Surbo Joogee was apprehended as a notorious receiver of stolen goods, on the occurrence of this dacoity on the river, the abovenamed witnesses were brought forward to prove that Surbo had purchased the 78 *chattas* alleged to have been carried off from the boat. They swore he bought them at full price from the prisoner, Bawool Ghose, and others, in the day time, they deposed to the good character of Surbo, and, at the same time, swore the prisoner was a dacoit and that he was apprehended in a previous river-dacoity. Upon being questioned why they allowed Surbo, for whom they were working, to buy any thing from dacoits, they replied a man Gooroochurn

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said the property was brought by the prisoners from Calcutta and therefore they said nothing further.

The characters of these two witnesses are by no means a guarantee for the truth of their statements, their presence at the sale of the *chattas* to Surbo, their previous knowledge of the bad character of those who sold them to Surbo and their silence on the subject, when they should have put him on his guard; and the readiness with which they supported Surbo's pleas by the implication of others, in order to release him, which they effected before the former sessions judge; with the fact that Surbo himself admitted he had removed the property to his sister-in-law's house, upon hearing of the search about to be made by the police, though he urged he made the purchase in ignorance of the property being stolen, all these facts throw a degree of doubt upon their evidence which in my judgment deprive it of any value, no evidence, independent of that given in defence of another prisoner, is adduced against the prisoner now before the Court; he is entitled to his release.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

Shahabad.

BODHI GOALAH (No. 2,) RUGHOO GOALAH (No. 3)

1854.

September 22.

Case of BODHI GOALAH and another.

Prisoners acquitted, the contradictions in their depositions evidently not wilful.

CRIME CHARGED.—Perjury in having on the 26th June, 1854, deposed under a solemn declaration taken instead of an oath before the officiating magistrate of Shahabad, that Purtab Roy, absconded defendant in court, is not *that Purtab Roy* whose name they mentioned in their previous depositions, *he* was of a fair complexion and small size, and that they cannot identify this man, and again after a few moments, having intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the officiating magistrate of Shahabad, that *this is the* Purtab Roy, the defendant, whose name they mentioned in their previous deposition. Such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. C. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 1st July, 1854.

Remarks by the sessions judge.—The prisoners were witnesses for the prosecution in a case of forcible rescue of a thief.

In their first deposition taken before the magistrate, they named Purtab Roy, as one of the offenders. 1854.

On this man being arrested and brought before the court, the prisoners when first questioned ignored the man, distinctly stating that he (Purtab,) whom they had mentioned in their deposition was a man of small stature and fair complexion. He in fact being a very tall man, as proved on the record. September 22. Case of BODHI GOALAH and another.

On being told to look carefully and speak again, prisoner No. 2, after some delay, identified the man at the bar as the criminal Purtab, and on this No. 1, (who had been intermediately removed) being recalled also, retracted his former statement and identified the man.

The prisoners stated in their defence that at the time their depositions were taken before the magistrate, the defendant, Purtab, was *sitting down* and therefore could not recognise him, but when he stood up they did.

The *futwa* convicts the prisoners of perjury and declares them liable to "*tazeer*." This is a clear case of wilful perjury, which broke down from vacillation and fear. The immediate retraction of the deliberate and palpable falsehood told, does not, in my opinion, diminish the prisoners' actual guilt, it only shews that they are not hardened perjurers.

The crime, as shewn in this case, is of very frequent occurrence, though the perjurers seldom allow themselves to be entrapped by a specific contradiction. The offence is a serious one, not only viewed as mendacity, but as a mischievous obstacle to the course of justice.

It is therefore with satisfaction that I pass a sentence on the prisoners, which it will be hoped, will serve as a warning to others.

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) It appears that the prisoners almost immediately corrected themselves, and declared their recognition of Purtab Roy. No doubt one of them, Bodhi, described the Purtab Roy, whom they had accused in 1849, as of a fair complexion; and the other prisoner, Rughoo, as of a fair complexion and short stature: still had they wished to falsify and get Purtab Roy released, they would not have immediately withdrawn from their denial. The great length of time which had elapsed from their last seeing Purtab Roy, in 1849, and having seen him only once, might well create confusion and doubt in their minds. Therefore, seeing nothing wilful in their contradictions, we acquit them of the charge of perjury and direct their release.

The Court notice that the prisoners have appealed on stamp paper of 2 Rs. value. Prisoners should be informed that their petitions may be on plain paper.

PRESENT:
A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND SELIM MUNDUL,
versus
NEEMOO JOLAHA (No. 1,) AND JOYKISHTO KYBURT (No. 2.)

Rajshahye.

1854.

September 22.

Case of NEEMOO JOLAHA and another.

The prisoners were acquitted, notwithstanding their alleged confessions before the police and deputy magistrate.

CRIME CHARGED.—1st count, dacoity with the murder of Koobeer Mundul; 2nd count, being accessaries both before and after the fact to the above dacoity; 3rd count, privity.

Committing Officer.—Baboo Gopal Lall Mitter, deputy magistrate of Nattore.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 18th August, 1854.

Remarks by the sessions judge.—The prisoners are charged with dacoity attended with murder, and the reference is unavoidable, as the sentence for complicity in such offence rests with the superior court.

The dacoits having assembled, attacked the house of the prosecutor's father, who was sleeping in the *verandah,* and immediately on his waking up, they struck him on the chest and left side, and afterwards plundered the house of property valued at rupees 25-9½ annas.

Another son of the deceased recognised No. 1, who, when apprehended, confessed to being concerned in the dacoity, and implicated the other prisoner, who likewise confessed; and both repeated their confessions before the deputy magistrate, naming the dacoits who had struck the deceased, and that a *kulsee,* and four *hauslees,* or silver necklaces, had been carried off. The property was made over to one of the gang to be sold, and the proceeds divided among them *after,* but they (the prisoners) got nothing.

The prisoners denied both their confessions, but both were fully proved to have been voluntarily made by them; and though in their defences they pleaded they had been beat by the police and *made* to confess, the plea was not supported by their witnesses.

Dr. Craddock, the civil surgeon, deposed that the deceased had died from a rupture of the spleen, and as there were bruises on the left side, the rupture may have been caused by a blow or blows inflicted over the region of the spleen. The deceased was out of health and the spleen diseased, being soft and enlarged.

As the prisoners were not personally concerned in the assault on the deceased, I only convict them of being accomplices in the dacoity, attended with the murder of Koobeer Mundul, and

suggest that they be sentenced to imprisonment in transportation for life.

The trial was held under Act XXIV of 1843, and the Court's Circular Order of the 5th July, 1844.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) We observe that the prosecutor, Suleem Mundul, on reporting the dacoity on the 19th April, at the thannah, said he knew none of the dacoits nor did he suspect any one; but on the 20th, his brother, Koonee Mundul, deposed to recognizing Neemoo Mundul, at the time. If he did so, it is incredible that he should not have stated this fact to the prosecutor before the latter went to the thannah. Moreover Neemoo Jolaha was apprehended on the 21st April, and his alleged confession was not recorded till the 23rd idem. These circumstances throw great doubts on the genuineness of his confession; and as the witnesses of both prisoners say that they were beaten at the time of apprehension, although not when their confessions were being taken down, we cannot convict on these, totally unsupported as they are by any circumstantial evidence. We therefore acquit the prisoners and direct their release.

1854. September 22. Case of NEEMOO JOLAHA and another.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

DHOOMUN.

Patna. 1854. September 22. Case of DHOOMUN.

Prisoner convicted of aggravated culpable homicide, and on account of the cruelty of the assault, sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of his wife Mussumut Sooboornee.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 11th September, 1854.

Remarks by the sessions judge.—It appears in evidence that the death of Musst. Sooboornee, wife of the prisoner Dhoomun, was reported at the thannah on the 26th July last, as having occurred by her own hand. On further investigation by the police, however, it was found that husband and wife had, on the same day, a violent quarrel during which Dhoomun closed the door of his house and prevented any body from entering. Witnesses Nos. 4, 5, 6 and 7,* depose to hearing cries and beating from the outside of the house, and that they called to the prisoner and remonstrated with him. That he returned them

* No. 4, Fukeer Chund.
,, 5, Imamun.
,, 6, Sheikh Enayet.
,, 7, Gholam Jelanee.

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a short answer and bid them go on their way and mind their own business, or words to that effect, subsequently the police burkundaz, witness No. 1,* arrived, and in company with Oograj witness No. 2, a forcible entrance into the prisoner's house was made and they then and there discovered the body of the deceased freshly murdered, with wounds and marks of violence on the head and arm. On the 27th July, the medical officer Dr. Dicken examined the body, and his evidence is decisive and clear as to the wounds being the cause of death, and also as to the impossibility of their having been self-inflicted by the deceased. The prisoner at the time of discovery was alone in the house with his wife, and he is decribed as being found in a moody and stupified state, but the evidence does not make him out to have been intoxicated or even excited by drink, as reported by the police.

* No. 1, Hurruckdhean Singh, Burkundaz.

He states in his defence that on the day of his wife's death he was absent from home, for the purpose of selling some cloth, he being a weaver by trade. That some people told him, his wife had lost her senses and was in a sort of frantic state (a condition to which she was constitutionally subject at times.) That he immediately returned home and did all that he could to help her, but that she persisted in trying to do herself mischief and at length succeeded in spite of his efforts in killing herself with a mill-stone. The evidence of the prisoner's witnesses† go to prove little more than that the deceased was subject to insane fits, but neither their depositions nor the prisoner's own story is worthy of the least credence. It seems to me that one circumstance only leaves a doubt of the prisoner's intention to commit murder, namely, the fact of the assault having occurred at midday, and the prisoner's knowledge that parties outside the house were aware of what he was doing. On the other hand, the savage cruelty of the attack and extreme severity of the wounds, would lead to the conjecture that nothing less than destruction of life could have been his intent. I would, however, give him the benefit of the doubt as to intention, and accordingly convict him of aggravated culpable homicide, and recommend a sentence of transportation for life.

† No. 1, Goondur.
,, 2, Nuckchhedy.
,, 3, Wahid Ally.
,, 4, Bukun.
,, 5, Ungnoo.

The *futwa* of the law officer finds "*kutl shebeh amd*," since no eye-witnesses to the fact of murder are brought forward.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.)

Mr. A. Dick.—There is no proof at all, or even mention of any quarrel, or dispute between the prisoner and his wife, the deceased, and the prisoner does not appear to have been in the

habit of ill-treating her. The injuries observed on the corpse, though indicative of severe and cruel beating, do not evince intention to kill. Indeed, several of them may have been caused by the struggling of the woman herself in contention with her husband, as it is in evidence that she was a powerful person, and had been subject to fits of insanity. The evidence however of the witnesses, who heard the husband and wife fighting inside the house, and of the civil surgeon, that it was impossible she could have inflicted all the injuries on herself and that they were the cause of death, raise a violent presumption, that the prisoner killed her in a state of uncontrollable passion, from some unknown cause. The number and severity of the injuries justify the punishment recommended by the sessions judge.

1854. September 22. Case of DHOOMUN.

Mr. B. J. Colvin.—I concur, as I do not think there is sufficient evidence to prove a deliberate intention in the prisoner to kill the deceased.

Messrs. A. Dick, and B. J. Colvin.—The Court observe, the *futwa* convicts of culpable homicide, not because of there being no eye-witnesses to the deed, but because there is no proof that a weapon likely to cause death was used.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges*

JEETOO MANNAH AND GOVERNMENT,

versus

KISTO SAMUNTH OR SAOOT (NO. 1, APPELLANT,) SOOKDEB KOWRA SIRDAR (NO. 2,) AND BISSOONATH HAREE CHOWKEEDAR (NO. 5, APPELLANT.)

Hooghly. 1854. September 23. Case of KISTO SUMUNTH OR SAOOT and another.

CRIME CHARGED.—Dacoity in the house of, and wounding the prosecutor, Jeetoo Mannah, and plundering therefrom property to the amount of rupees 167-10, on the 26th May, 1854.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 10th July, 1854.

Remarks by the officiating sessions judge.—The case was tried under the provision of Act XXIV. of 1843.

Conviction and sentence passed by the sessions judge in a case of dacoity upheld in appeal.

The prisoners pleaded *not guilty*.

The prosecutor's statement is, that his house was attacked little before midnight of the 14th Joist last, by a band of about twenty dacoits, who beat and slightly wounded him, and plundered his house of property in cash, ornaments, and domestic utensils, of the aggregate value of rupees 167-10. He recog-

1854.

September 23.

Case of Kisto Samunth or Saoot and another.

nised the prisoners, Kisto Samunth, No. 1, Sookdeb Kowra Sirdar, No. 2, and Bissoonath Haree Chowkeedar, No. 5, who all live in the vicinity. These prisoners were also recognised during the dacoity by the light of *mussals* by the witnesses Nos. 1 and 2, who slept at the prosecutor's house on that night.

The prisoners were arrested on the following day, when some of the property, which has been proved to belong to the prosecutor, was found in No. 1's girdle, and a further portion in No. 2's house, and they both confessed, implicating the prisoners No. 5 and others. They repeated this confession before the magistrate. All the prisoners denied the charge at the trial; Nos. 1 and 2 declared that their confessions had been in the first instance extorted from them, and that they had repeated them before the magistrate, when in a state of intoxication. The prisoner No. 5, called six witnesses to prove that he was present upon his beat, on the night of the dacoity; of these witnesses, two only saw him, one at 7 or 8 o'clock and another, who was fishing, at 12 P. M., said that prisoners came and asked him for fish at that hour. The other four witnesses could not say where prisoner was upon the night in question. One of them, No. 36, distinctly stated that prisoner did not go his round that night.

The defence having entirely failed, and the charge being fully established against the prisoners, by the evidence of the eye-witnesses, and the confessions of Nos. 1 and 2, which are proved to have been voluntarily given both before the police and the magistrate, and by the discovery of the stolen property upon the person of No. 1, and in the house of No. 2, I convict them of the charge.

I sentence the prisoners, Nos. 2 and 5, who are chowkeedars, to imprisonment for ten years, and two years in lieu of corporal punishment, in all twelve years, with labor in irons, and the prisoner, No. 1, to seven years' imprisonment with labor in irons and one year in lieu of corporal punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court find that the evidence fully supports this conviction. The prisoners were named as recognized from the first; property was found, and they confessed as stated by the sessions judge. We therefore reject their appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

SANSAR AHIR.

Sarun.

1854.

September 23.

Case of SANSAR AHIR.

Prisoner convicted of highway robbery with wounding, sentenced by the sessions judge to fourteen years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Highway robbery attended with wounding of Molung and Mosafir, Plaintiffs, and plunder of property to the amount of rupees, 66-4.

CRIME ESTABLISHED.—Highway robbery attended with wounding.

Committing Officer.—Mr. W. F. McDonell, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 7th November, 1853.

Remarks by the officiating sessions judge.—This is the continuation of a case tried here in June, 1852, when several persons were convicted and punished for the offence now charged against this prisoner, and the following are the remarks then made on the trial which was appealed to the Nizamut Adawlut, but affirmed by that Court on the 21st August, 1852.

"This is an aggravated case of highway robbery attended with wounding, though not to such a degree as to endanger life, and the following is a brief statement of its main facts. It appears that a party of seven cloth-dealers who had been to the bazar at Panapoor, on the evening of the 20th April last, were returning home from thence, when crossing the Doomree nuddee, three of their number halted to refresh themselves, whilst the others went on, and the latter had only just got beyond the river, when they were accosted by the prisoner Kassim Ally who got a little tobacco from one of the party and then went towards his house which was close at hand. They then went on and had got only a little (one *russee*) further when they were addressed by the prisoners No. 4, Loton, and No. 7, Suddasee and almost directly after, were assaulted by a number of men and were beaten, wounded and robbed of every thing they had (even to the clothes on their persons) when the robbers got clear off. Their companions after this, came up as did some other persons and the wounded men being taken home, such of them as could go, went off to the thannah and there mentioned what had occurred, speaking of the prisoner Kassim, Loton and Suddasee, and a man named Chuttree (fled) as having been engaged in the thing, and the prisoners Kassim Ally and Loton being at once apprehended by the police (Suddasee was taken subsequently); search was made in Purkhee's house and some portion of the plundered property was found in

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it. Kassim Ally to the police admitted being cognizant of the robbery and spoke of Purkhee and others as engaged in it, but to the magistrate he denied this, and on his trial here he says, that the case has been got up from enmity. Loton and Suddasee make, generally speaking, the same defence, but none of them can satisfactorily disprove the strong case against them, and as they have been clearly identified from the first, there is not in my opinion, the least doubt of their guilt."

The prisoner was one of the parties then named as having aided in the crime, though he at the time eluded apprehension. He is satisfactorily identified as one of the party engaged in the case, and though he denies his fault and says that he is spoken of from enmity and was absent when the affair took place, he has no proof of this and his own witnesses speak to the fact of his property being attached and sold in consequence of his flight. The jury convict him, and as I quite concur in this verdict, I have sentenced him like all his associates in the crime.

Sentence passed by the lower court,—To be imprisoned with labor and irons for a period of (14) fourteen years from the 7th November, 1853.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner has evaded apprehension since he was first named by some of the persons robbed. He alleges, that the prosecutors and witnesses accused him from enmity, some dispute regarding a bund between their respective villages having made them his enemies, but the evidence is conclusive against him, and we see no reason to interfere with the sentence.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT, AND MUSST. PUBITREE,

versus

IMRIT RAE.

Shahabad.

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Case of IMRIT RAE.

Prisoner convicted of severely wounding, with intent to murder his aunt, with

CRIME CHARGED.—Severely wounding Musst. Pubitree, the prosecutrix with a sword with the intent to murder.

CRIME ESTABLISHED.—Severely wounding Musst. Pubitree, the prosecutrix with a sword with the intent to murder.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 15th June, 1854.

Remarks by the sessions judge.—The prosecutrix in this case is the *aunt* of the prisoner, the two having formed an illicit con-

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Case of IMRIT RAI.

whom he had an illicit connexion, sentenced to fourteen years' imprisonment.

Appeal rejected.

nexion were expelled from their caste, and left their home in consequence.

On their way accompanied by a servant, who carried their things, some words passed between them, when the prisoner, who was walking behind the prosecutix, drew his sword and struck her several blows on the neck and arms.

One of these blows cut through the muscles of the neck and penetrated to the bone. The wounds were exceedingly severe, inasmuch, that the civil surgeon was at first hopeless of the wounds' recovery.

The occurrence is deposed to distinctly by witness No. 1, who was in company with them. The prosecutrix, whose evidence was taken by the magistrate while under treatment in hospital, shewed a disposition to abandon her former statement made at the thannah and stated that some other Imrit had wounded her, but before the court she adhered to her first statement, of the truth of which there can be no doubt. The intermediate equivocation was doubtless caused by the exercise of some influence, while she was yet within the precincts of the jail, and does not in my opinion in the least affect the credibility of her story. The collateral circumstances connected with the case are all attested by evidence.

The defence of the prisoner is a corroboration of the charge.

The *futwa* convicts the prisoner of the crime charged, and declares him liable to "*seeasut.*"

This is a savage and deliberate attempt at murder, the wounds' recovery was not to be hoped for, and there are no extenuating circumstances.

I accordingly sentence the prisoner to the full punishment authorized.

Sentence passed by the lower court.—To be imprisoned with labor in irons for (14) fourteen years from the 15th June, 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The evidence before us leaves no doubt that the prisoner cut down the prosecutrix, inflicting two severe wounds on her neck and others on the arms, which she raised to protect herself and that her life was for some time despaired of. The circumstances appear to us to fully warrant the presumption, that the prisoner intended to take the woman's life and fled probably under the impression that he had effected his purpose.

The defence set up by him, that the woman's brother, Perkaus Ray, followed them and inflicted the wounds on the woman, has no foundation in truth, and must have been invented by the prisoner.

We see no reason to disturb the sentence passed by the sessions judge, and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

GOGOIERAM.

Assam.

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Case of GOGOIERAM.

The prisoner was convicted of the wilful murder of a boy, and sentenced capitally.

CRIME CHARGED.—Murder of Mutram, a boy, on the 6th June, 1854.

Committing Officer.—Captain C. Holroyd, magistrate of Seebsaugur, Assam.

Tried before Major J. Butler, officiating deputy commissioner of Assam, on the 24th August, 1854.

Remarks by the officiating deputy commissioner.—The prisoner pleads guilty of the charge preferred against him.

Bhaboolee No. 1, *witness for prosecution.*—On the 25th of Joit, on a Tuesday, about four *dunds* in the morning, the prisoner Gogoie who is a neighbour of mine, crossed the Disang Nuddee on the plea of bringing some medicine from the jungle, taking with him my nephew Mutram.

About 12 o'clock not seeing Mutram return, I went to the ghaut of the Nuddee to make enquiries after the boy, and heard that neither he nor Gogoie had crossed, and on making enquiries three several times, I could learn nothing about them.

After this, I went to the house of the prisoner, and enquired about them, when the mother of the prisoner, Musst. Falgoonee, stated, that her son the prisoner had given Mutram food to eat at Korigawa and sent him with others to bring wood, stating further, that she had heard so from her son the prisoner.

On the prisoner coming home to eat I went again to his house, but could not find him, I returned home and went again, but again could not find him, his mother and wife stating that he had gone out somewhere; about that time I heard from one Jadoo that my nephew Mutram was murdered, and that his body was lying in the Soomooner jungle. Being distressed, I did not see the corpse or ask any questions of the prisoner, but I heard from others that he had committed the murder.

I have no ill-will to the prisoner; had I borne any ill-will towards him, I should not have allowed my nephew to have gone with him. I live near the prisoner and have always known him to be a man of good temper, and never saw him take any thing intoxicating, and I cannot say why he killed my nephew. The prisoner went to the jungle to bring as he said some medicine for his sick daughter, an infant, and took with him my nephew, and I know nothing more about him.

Thossur Sadonee No. 2, witness for prosecution.—In the month of Joit, on the 25th, having heard from the moujadar that the prisoner Gogoieram had murdered Mutram and escaped, in order to apprehend him I with others went and searched from place to place in the jungles, and about one and half *prahurs* of the night in the jungle near the village we apprehended the prisoner, and the prisoner before the moujadar acknowledged that he had killed Mutram with the *dao* produced, and said that he had wiped the blood off the *dao* with grass, and put it aside in his house, and his mother went in and brought it out, but it being night, no signs of blood could be seen, but the prisoner voluntarily confessed that he had a desire to kill the deceased, and that he had killed him and drank his blood.

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I have always known the prisoner as a man of good temper, and I know that he treated the deceased Mutram with great kindness, I apprehended the prisoner while he was seated with a small *dao* in his hand, but saw no blood on his person.

The day after the murder I went and saw the place where it was perpetrated, the distance is about one call from the prisoner's and Mutram's house, and from the Soologooree road about sixteen miles in the jungle, the previous day the corpse was found there, I saw the ground wet with blood about a span in circumference. The deceased was about seven or eight years of age. I did not see the prisoner for two or three days previous to the murder.

Gatee No. 3, witness for prosecution.—I went with others to apprehend the prisoner, but in my absence Thossur Sadonee apprehended him. The prisoner was brought before the moujadar in the prisoner's house; this I saw, and heard the prisoner acknowledge before him that he had killed the deceased with a *kamptee dao*, and had drank his blood. I know the prisoner to be a man of good temper and sound mind, but for two or three days previous to the murder, I did not see him.

Jadoo No. 4, witness for prosecution.—On the 25th Joit, on Tuesday about 12 o'clock A. M., according to the request of Mutram's uncle Bhahoolee to search for him, I and Boga, and Manika, went to search for him where wood is usually cut in the jungles, and saw the corpse of Mutram with the neck cut, and merely hanging on to the body with a thin piece of skin. The place where the corpse lay was fifteen or sixteen *nulls* distant from the Soologoree road, and on my going and giving information in the village, the villagers turned out and went and conveyed the corpse to the house of the prisoner; afterwards I went with many people to apprehend the prisoner. On Thossur Sadonee bringing the prisoner, he confessed that he had murdered the deceased and drank his blood. The houses of deceased and the prisoner's are distant from my dwelling ten or twelve *nulls*, and I know that no ill-will existed between the

1854. prisoner and the deceased; the prisoner sometimes used to give the deceased food and support him.

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The prisoner was known to have had a good temper, he used to cultivate his fields well, and the day before the murder I saw the prisoner, but noticed nothing particular in his conduct. The prisoner's youngest daughter was attacked with diarrhœa, but I did not hear that the prisoner was in any way distressed about it, and there was no reason to suppose that he was so, I heard on the day of the murder that he had gone with the deceased in the jungle to search for some medicine, there was no wounds on the body of the deceased, except the one on his neck.

Boga No. 5, witness for prosecution.—In the month of Joist (I do not recollect the date) one day about 12 o'clock, on my return home from the fields, I heard from my mother that my elder brother the prisoner had taken with him the deceased Mutram to consult the fates, or to look for medicine, and had left him somewhere or other. After telling me this, she desired me to go and search for them. I and Jadoo and Manik went to where they collect wood in a Soom jungle, and near the Soologoree road in the jungle, we found the corpse of Mutram, with his head cut off, and hanging on by a small strip of flesh at the back of the neck, we went and reported the circumstance in the village, and my elder brother, the prisoner, escaping, the villagers, about one or one half *pahurs* of the night, went in search of him, and apprehended and brought him, when the prisoner confessed his having killed the deceased with the *kamptee dao* produced, and having drank his blood, and before the moujadar my mother produced the *dao* now before me, but whether there was any blood on it or not, I did not see, I cannot say why the prisoner murdered the deceased, there was no ill-will between the prisoner and the deceased and my brother the prisoner appeared to be in good health and sound in mind.

The prisoner's child aged about one and half years suffering from fever and diarrhœa, he went to the jungles to procure some herbs, or to consult the brahmans as to her fate, and returned about 12 o'clock, but without the boy Mutram who went with him. I heard this from my mother, but I did not then see the prisoner in the house, and how he went and came I do not know, and I am not aware of anything further about him. The prisoner could not have been distressed at the sickness of his child, he was apparently quite well the day before. It is not customary with us to consult the fates with blood.

Bolloo No. 6, witness for prosecution.—In the month of Joist date unknown, on a Tuesday, the prisoner Gogoieram taking the deceased Mutram with him, after a long time Mutram not returning to his home, his uncle had a search made for him. A person by name Jadoo came and gave notice of his having seen the corpse of Mutram in the jungle, on which I and Hookoo-

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meah Boorooah and others went and found the corpse and brought it away. The head was nearly cut off, it was merely sticking on by a thin slip of skin, and it appeared to have been done by a *dao*, besides this there was no other wound on the corpse. After this the moujadar came to search for the prisoner and Thossur Sadonee apprehended and brought him to the moujadar about 12 o'clock at night, before whom he voluntarily confessed that he had murdered the deceased with a *dao*, and had drank his blood, and stated that the *dao* was in his house, his mother produced it, but I did not see whether there was any signs of blood on it or not. The corpse was found about one hundred and twenty *nulls* distant from the village in which the prisoner lived; the prisoner had no ill-will towards the deceased, and appeared sound in mind. I saw the prisoner the day before the occurrence of the murder, and as usual he was looking well, there was nothing the matter with him.

Sorallee Boorooah No. 7, witness for prosecution.—On the evening of the 25th Joist, I heard that the deceased had been murdered, and going to the prisoner's house I saw the villagers bringing in the corpse of the deceased and keep it in the prisoner's house, the neck of the deceased was almost cut through, the head was hanging on by a skin at the back, and it appeared as if cut by a *dao*.

The mother of the prisoner, Falgoonee by name, made known that her son the prisoner had gone to get medicine for a sick child of his, or to consult the fates and had taken the boy Mutram with him early in the morning, and about four or six *dunds* or one and half or two hours after, the prisoner returned alone with the *kamptee dao* in his hand, and after eating his dinner, again went out somewhere.

The villagers stated that they had found the corpse of the deceased about one hundred and twenty *nulls* distant from the prisoner's house, and people were sent to apprehend the prisoner, and Thossur Sadonee and others came upon the prisoner seated in the jungle and apprehended and brought him to me.

On my questioning him, he voluntarily confessed that he had murdered the deceased and drank his blood. The prisoner stated that on first setting out with the deceased he felt no inclination to kill him, but getting about sixty *nulls* distant, near the Singh door, he felt disposed to murder him, and proceeding on about one hundred and fifty *nulls* distant, near a large *butt* tree the inclination went off, and returning about forty or fifty *nulls*, he again felt disposed to murder him, and catching hold of the deceased took him from the road fifteen or sixteen *nulls* into the jungle, and with the *kamptee dao*, the one produced in court, he murdered him, and that he applied his mouth to the neck of the deceased and drank his blood.

On the prisoner stating that he had kept the *dao* with which

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he had murdered the deceased in his house, his mother went in and brought it out; being at night I could not perceive any marks of blood on the prisoner's body or on the *dao*. The prisoner merely confessed to having taken the deceased by the hand from the road into the jungle, but whether he, the deceased, knew that it was to murder him or not, he the prisoner did not tell me and I did not ask him.

The prisoner's mother stated that he had gone either to get medicine or to consult the fates, I do not recollect which, but I believe it was to get medicine, she said the prisoner had gone out, I at first heard from Sadee that it was to consult the fates that the prisoner went out with the deceased and murdered him. I have known the prisoner about two years, his house is about two hundred or two hundred and fifty *nulls* distant from mine, I have always known the prisoner to be well and sound in mind, and am not aware of there being any ill-feeling between him and the deceased, or any of the deceased's relations.

Question by prisoner.—I did not say I seized the deceased by the hand, how therefore do you depose to that effect?

Answer.—I deposed to what the prisoner stated.

Bollee Hookoomcah Bororah No. 8, witness for prosecution. In the month of Joist on a Tuesday, I do not recollect the date, the Boloo Korr, went to my house and informed me that the body of the deceased was found in the jungles, after he went out with the prisoner, on which I and others proceeded to the spot and saw the corpse. the neck was cut and merely sticking on by a small strip of skin, and it appeared that it must have been done by a *dao*.

The body of the deceased was taken up and removed to the house of the prisoner, but on searching for him, he could nowhere be found.

I heard from the mother of the prisoner, that the prisoner had taken the deceased with him early in the morning to search for some medicine for his sick child, and that the prisoner returned alone and left his *dao* in the house and went out again. On the moujadars coming at night and searching for the prisoner, he was found by Thossur Sadonee, and others in the jungles, and was apprehended and taken to the moujadar, and on our questioning him, he the prisoner said, that on first going out with the deceased, he did not feel any inclination to kill the deceased, but going on some distance he felt disposed to do so, but the feeling wore off, but on returning, the inclination again came over him, and he took and murdered the deceased with a *kamptee dao* His mother then produced the prisoner's *kamptee dao* from his house, and it being dark at night, I could not perceive whether there was any blood on it or not, but the prisoner confessed that he had murdered the deceased and drank his blood. On the spot where the murder was committed there was a little

blood on the ground, but there was none scattered about. The prisoner's house is about two hundred or two hundred and fifty *nulls* distant from mine, I have known the prisoner for about eight or nine years, and known him to be well and sound in mind, but for one or two days previous to the murder I did not see him, I heard that the prisoner had no ill-will to the deceased or to his relations, and I have no knowledge of the friendly terms between the prisoner and the deceased.

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Mussumut Fulgoonee, mother of prisoner, No. 9, witness for prosecution.—I know nothing of the murder.

My son the prisoner Gogoie, took the deceased Mutram early in the morning, and went with him to procure some medicine for his sick child, but what he did with him I do not know.

My son returned to his house about twelve o'clock with his *kamptee dao* in his hand, and stuck it into the *tattee* of the house, and asked for something to eat. On my asking him about the boy Mutram, he said that after getting him something to eat in the village, the boy went with others to cut wood; and eating his dinner in a hurried manner he again went out, and in the evening the villagers brought to my house the corpse of the deceased, and I saw a wound in front of the neck where it was cut through, and about twelve o'clock at night, Thossur Sadonee, apprehended and brought in my son from the jungles, he freely confessed to having murdered the deceased and drank his blood.

The prisoner on setting out, stated that he was going to the Disang ghaut to procure some medicine, and asked Bhaboolee, for his nephew the deceased Mutram, and brought him with him, and with the *dao* in his hand he went away. He was quite well and was sound in mind.

The prisoner on returning went into the house and eat his dinner in a very hurried manner and again came out, and I had no opportunity to see him well or to speak to him, I cannot therefore say how he was, I did not look to see whether there was any blood about his body or the *dao*. The prisoner always liked the deceased, and used to give him food to eat, and on going out anywhere used generally to take him with him in the same manner, and on the day of the murder he took him with him. The prisoner did not appear distressed about the sickness of his child, nor was there any cause for his being so, as she was not so very ill. He always appeared to be sound in mind.

Nega Hazaree No. 10, Byragee No. 11, witnesses for prosecution.—Witnesses to the *post mortem* examination of the corpse, and the confession in the mofussil to the police.

Denanath sub-assistant surgeon No 12, witness for prosecution. Denanath, sub-assistant surgeon, deposes to the examination of the corpse, and the prisoner is in full possession of his intellectual faculties, is not of an excitable temperament, but rather apathetic.

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Moodooram Gogoie No. 13, *and Baboo Tecklah No.* 14, *witnesses for prosecution.*— Witnesses to confession of the prisoner before the magistrate.

Confession of the prisoner Gogoieram at the thannah.— Yesterday morning I left my house with the intention of going to Boxoo, to consult Rangahdooreah Borooah, as to the fate of my sick daughter Gooboorm, by name, who was ill with fever, I went and asked Bhaboolee Korr, uncle of Mutram to let the boy accompany me. The boy and myself left our village Burpeal, and leaving the Soologoree road on the west, and the Singh gate on the south, in the Soom jungle, I took the boy, and feeling an inclination to murder him, in a state of aberration of mind, with the *kamptee dao* in my hand, on his following me, I with one blow on his neck separated his head from the body and drank his blood. It was then about four *dunds** in the morning, I then laid down on the grass in that place, and feeling thirsty, I left the body, and rubbed the *dao* on the grass to take off all marks of blood. About six *dunds* I arrived at my house, and after bathing and eating some food, Bhaboolee enquired of me where his nephew was, I told him that he had remained in the jungles to search for wood, after which I ran away from my house into the jungles, and about one and half *puhurs* in the night the Sadoomdar of the moujah and others went and apprehended and brought me back, I have never taken or been addicted to any thing intoxicating, and I did not take any thing yesterday, I was never mad before, and had no ill-will towards the deceased, or his parents or any one. This is my reply.

* 1 dund twenty-four minutes.

Confession of the prisoner before the magistrate.—Yesterday the 6th June, about *derh puhur* of the day, ten o'clock, on account of the sickness of my daughter, took with me the boy Mutram, of my village with the intention of going to Boxoo, to consult the augurs. On the way I felt an inclination to murder him, on which I left the road and went towards the jungle sixteen or seventeen paces, the boy also followed me, I then with the *kamptee dao* in my hand, and which I brought with me from my house, cut his throat, his head was merely left hanging on by a slip of skin, he expired on the instant, I then placed my mouth to his throat and sucked all the blood, and returned to my house, and removed all marks of blood from the *dao* and placed it aside. I then returned to where the body of the deceased was and ran off into the jungles. After which the villagers came and apprehended me.

In fact being out of my mind I committed the murder, I had no previous intention of doing so, I took some *tamul pan* for the augurs, and carried my *kamptee dao* with me.

Confession of the prisoner before jury.—Gogoieram Ahom, prisoner, states, It is not possible I could, in my senses, have killed

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the deceased, I committed the murder in a state of aberration of mind, I have no other plea to urge.

Opinion of jury.—We find the prisoner guilty of wilfully and knowingly murdering the deceased.

Opinion of officiating deputy commissioner.—Early in the morning of the 6th June, the prisoner's daughter, a child about eighteen months old, being sick, the prisoner said he was going to the jungles for medical herbs, or to consult the augurs, and taking Mutram the deceased boy about seven or eight years of age with him, left his home; about 12 o'clock in the day the prisoner's mother Falgoonee says, he returned home without the deceased boy, and put his *kamptee dao* or sword in the *tattee*-wall of his hut, eat his food in a hurry and again went away somewhere.

In the evening the corpse of the boy, with the head nearly separated from the body, was discovered in the jungle a short distance from the prisoner's home, and the prisoner not being found at home suspicion fell upon him, and search was immediately made by the villagers for him, and he was apprehended about 12 o'clock at night sitting in the jungle. On being brought before the moujadar he at once confessed that he had cut the boy's throat and drank his blood, he made the same confession before the police and the magistrate, and before the jury, urged that he was not in his senses when he did it. The jury find the prisoner guilty of wilful murder, and the magistrate concurs* in this verdict, but seems to think the prisoner could not have been sane when he committed the atrocious deed.

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* No. 1 of 1854.

From Captain C. Holroyd, magistrate of Seebsaugur to the deputy commissioner of Assam-Gowahatty, dated Seebsaugur, 3rd July, 1854.

Sir,—I transmit herewith the proceedings as per margin* in a trial held by me with the assistance of a jury on the 30th of June and 1st and 3rd of July, the intermediate date being Sunday.

*Court of magistrate, zillah Seebsaugur, trial No. 1 of 2nd sessions of 1854.

GOVERNMENT,

versus

No. of prisoner.	Name of prisoner.	Date of apprehension.	Date of reference.
1.	Gogoieram son of Dhuni, aged 35 years.	6th June, 1854.	3rd July, 1854.

Charge, murder of Mutram, a boy, on the 6th of June, 1854.

Verdict of jury, guilty.

Verdict of magistrate, guilty.

Punishment recommended, imprisonment for life with labor in irons in transportation beyond sea.

The prisoner pleads guilty.

The circumstances of this case, are as follows:

On the morning of the 6th of June the prisoner proceeded, accompanied with the deceased a boy about eleven years of age along the Sologooree Alli in the direction of the Disang river, for the purpose, he said, of procuring some jungle medicine for his daughter, an infant.

That on reaching the Singdewar, a distance about 200 yards from his own house, the idea entered his head of killing the

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Two witnesses give circumstantial evidence that the prisoner took the deceased boy with him in the morning, to search for medical herbs in the jungle, and returned home without him. Two witnesses depose to his apprehension in the jungle at night,

boy; proceeding on a little further he changed his mind and turned back, when again the former desire coming over him, he again turned and proceeding on the road a little way, took the boy off the alley into the jungle to the right and there killed him with one blow of the *dao* he had in his hand, almost completely severing the head from the trunk, then putting his mouth to the gullet he drank the blood, after which rubbing the *dao* on the grass he returned to his home, he there met his mother, who asking where the boy was, he told her, the child has gone with the other boys of the village to fetch firewood. He then took his food (rice) having placed the *dao* by the side of the hut, after taking his dinner, he appears again to have returned to the spot where the corpse was; and from thence to have gone into the jungles to secrete himself. The deceased not returning after a lapse of time and the prisoner himself being absent, the uncle of the deceased went with some other ryots to search, and found the corpse of the boy in the jungle to the right of the road, this they brought to the prisoner's house, and parties proceeded in search of the prisoner, who was apprehended about 10 or 11 o'clock at night by the witness No 3, who is "Sadhonee" of the Mozah. On being brought to his house before the Mozadar and other people there collected, he at once confessed the crime. The *dao* with which the deed was done was found in the prisoner's house.

Witness No. 3, *Thoopur.*—Witness apprehended the prisoner.

No. 5, Jadoo.
,, 6, Boga.
,, 7, Bulloo
,, 8, Sorath Mozadar.
,, 9, Bulle Hookumya.
,, 10, Mussumut Fagoonee.
,, 11, Naga Hazaree.
,, 12, Byr gee Mooktar.
,, 14, Sub-assistant surgeon, Dinnonath Dass.

Speak all to the nature of the wound, and Nos. 5, 6, 7, 8, 9 and 10 recognize the corpse, and all with the exception of No. 14 are witnesses to the confession at the thannah and in the mofussil.

† No. 4, Gatee.
‡ ,, 19, Muddooram.
,, 20, Buhoo, Tieklah.

Witness to confession in the mofussil.†

Witnesses to confession before magistrate.‡

No. 2, Baboohe.
§ ,, 10, Mussumut Fagoonee.

Circumstantial evidence.§

These witnesses prove the prisoner having taken the deceased with him to the jungle, on the morning of the 6th June, 1854, and his returning about noon without the child, and on being questioned where the boy was, stating that he had gone with some other boys of the village to collect firewood of the prisoner after taking his food going out of the hut, and not returning till brought back by witness No. 3.

The jury return a verdict of guilty against the prisoner and in this verdict I concur, as it is borne out both by the confession of the prisoner and the circumstantial evidence in the case that the deceased met his death at the hands of the prisoner. But the circumstances of this case are so peculiar and so horrible, that I cannot believe any man in the perfect possession of his right senses, would have acted in the manner the prisoner has done. From all the evidence that has been adduced, there does not

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and his voluntary confession, throughout the trial, is confirmed by several witnesses. The native sub-assistant surgeon deposes to the prisoner showing no symptom whatever of insanity, and that he is in the perfect enjoyment of his mental faculties, and his mother Falgoonee, No. 9, witness and others all confirm the native doctor's evidence, that he has ever been and is still sound in mind. The prisoner says he was out of his mind when he committed the murder. This is not borne out by the evidence, and the fact of the prisoner running away and hiding himself in the jungles after he had cut the boy's throat and drank his blood, shewed he was aware that he had done wrong. It appears that his own child was ill, and that to effect her recovery he went out with the deceased boy to consult augurs, or collect medicinal jungle herbs; on the road in the jungle he deliberately meditated and perpetrated the most diabolical murder it is possible to conceive, with one blow of his *kamptee dao* or sword, he nearly severed the boy's head from his body, causing instant death, and then he drank his blood. Coupling this act of drinking the blood of the deceased boy, with his confession that he went to consult the augurs regarding the recovery of his child, I come to the conclusion that he deliberately sacrificed the deceased boy to effect the recovery of his own sick child, thinking it would be acceptable to the deotas or spirits, or the goddess Kalee; many of our tribes in Assam offer up sacrifices of animals for worldly prosperity, and in some instances human beings have been sacrificed to avert sickness or other ills, and as there is no other cause whatever assigned for the heinous deed, and the prisoner being beyond a doubt in a sound state of mind, and therefore fully responsible for his acts, although we cannot distinctly prove that the boy was sacrificed to appease the deity, or whether he was murdered

appear to have been the slightest cause or reason for the murder, the deceased, an unoffending young lad, appears rather to have been a favorite with the prisoner, the act does not appear to me to have been premeditated, the fact of the prisoner taking a *dao* with him from his hut, does not in any way tend to prove this, for a man never thinks in Assam of going into the jungles without a *dao* in his hand, the horrible act of drinking the blood is something so brutal and savage, particularly in a man spoken of by all as quiet and unoffending, that I cannot but believe the prisoner was under a fit of temporary insanity or mental excitement, that a man of weak mind would deprive him in a measure of control over himself. There has been no attempt to prove insanity by the prisoner, he is a man of a lethargic and indolent nature, and appears either ignorant or indifferent in a great measure to his situation, I would give the prisoner the benefit of the doubt, as to whether he were in full possession of his mental faculties, at the time the deed was committed, and on these grounds recommend he be transported for life beyond sea, in place of a capital sentence.

I have, &c.

(Sd.) C. HOBROYD,

Magistrate,

Magistracy, zillah Seebsaugur, the 3rd July, 1854.

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to gratify the prisoner's cannibal propensity to drink the child's blood, still there is no doubt but that he has perpetrated a wilful premeditated cruel murder, and without a single extenuating circumstance in his favor, I feel constrained to state, that I deem it a duty to recommend that he be sentenced to suffer death by being hanged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) That the prisoner has committed a cruel and deliberate murder there can be no doubt, and whether premeditated or not, the crime is not the less atrocious from the absence of all provocation and power of resistance on the part of the child, whose life was taken.

The magistrate, it appears entertained some doubt of the prisoner's sanity, on the ground that no man "in the perfect possession of his right senses, would have acted in the manner, the prisoner has done." But we observe, that so long as the prisoner has been known to the witnesses and as long as he remained under their observation on the day in question, no symptoms of aberration of mind were even visible, either before or after the occurrence of the murder: it cannot therefore be presumed, as suggested by the magistrate of Seebsagur, that a temporary loss of reason suddenly intervened, leading the prisoner to the commission of this one crime, but in no other respect affecting his thoughts or actions. The magistrate has in fact drawn his inference from the prisoner's own account of the murder, and it is not improbable, that his story of the uncontrollable impulse to kill that seized him, and the cannibal propensity to drink the blood as it flowed from the child's throat is a pure invention of his own, intended to throw doubts on his sanity of mind, as a means of escaping the full penalty of his crime. Had the blood-drinking part of the story been true, there must have been evidence of the fact in marks of blood on his clothes, which it is positively stated showed no such signs of his guilt. We must therefore reject all such pleas, in the prisoner's favor, and have no hesitation in concurring with the deputy commissioner of Assam, that no reasonable doubt can be entertained of the prisoner's full possession of his faculties; and viewing the case as one wholly void of any palliative circumstance, we deem the prisoner deserving of death and sentence him accordingly.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

GOVERNMENT,

versus

KAYAMOODIN SHIKAREE (No. 14,) AND BOODHYE SHIKAREE (No. 17.)

Hooghly.

1854

September 25.

Case of KAYAMOODIN SHIKAREE and another.

Conviction and sentence of the sessions judge in a case of dacoity reversed in appeal.

CRIME CHARGED.—1st count, prisoner Nos. 14 and 17, dacoity in the house of Kazi Meizudin, at Bansdoho, on the night of the 16th December, 1849, in which property to the amount of Rs. 4,141-12 annas was plundered; 2nd count, prisoners Nos. 14 and 17, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 6th February, 1854.

Remarks by the officiating additional sessions judge.—This is a commitment made by the commissioner for the suppression of dacoity, and the prisoners were charged with ten others, with having committed a dacoity in the house of one Miezudin Kazi, and having belonged to a gang of dacoits. For the particulars of this case, I refer the court to my letter* of reference No. 32, of the 6th February, 1854, in which I recommended a sentence of transportation for life on the prisoners' associates. The affair was planned by one of them, Kayamoodin Shikaree, and the gang compassed a distance of upwards twenty miles between sunrise and sunset to accomplish it. The attack was made about midnight and on breaking into the house, the dacoits found a man and a woman in the lower apartments, the latter of whom told them that the valuables were kept upstairs in an iron chest and pointed out the way in which the room was to be approached. The strong box long resisted the efforts of the robbers, but eventually the lid yielded to the repeated strokes applied to it and partially gave way, through which the hand was introduced and cash abstracted in small quantities with much time and labor. The evidence failed to establish the second count of the charge against the prisoners and they have consequently been sentenced by this court. The letter above alluded to, will show the proof against the prisoners and the defence set up by them. The latter is little more than a simple denial of the charge.

* See Nizamut Reports, page 320, of 10th March, 1854.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen (14) years, and in lieu of corporal

1851.

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punishment for two years more, in all sixteen (16) years each in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We find that soon after the occurrence of the dacoity at Bansdoho, (of which crime the prisoners appealing have been convicted,) the prisoners were apprehended on suspicion, but acquitted by the magistrate in the absence of any proof to connect them with the robbery, although at that time, other accused parties confessed before the magistrate and named their associates, among whom were two of the approvers now giving evidence for this prosecution, but the individuals now before us were not implicated. There is now nothing against the prisoners, but the statements of two approvers, for the third, Beesoo, did not implicate the prisoners by name in his previous confession. So far as the records before us furnish any evidence, it is rather of an exculpatory nature than otherwise, and we do not consider the charge sufficiently made out to warrant the conviction of these men and acquit them of the crime charged.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

MOHUN.

Hazareebagh.

1851.

September 25.

Case of MOHUN.

Prisoner convicted of culpable homicide, and sentenced to seven years' imprisonment.

CRIME CHARGED.—Wilful murder of Ghassy.

Committing Officer.—Capt. W. H. Oakes, Principal Assistant, Governor General's Agent, Lohardugga.

Tried before Major J. Hannyngton, deputy commissioner, Chota Nagpore, on the 26th August, 1851.

Remarks by the deputy commissioner.—The prisoner pleads not guilty.

On the 17th May last, Ghassy now deceased, made oath before the principal assistant to the effect that on the preceding day (16th) he and others, about sixty persons, went to sow rice for the Raja Basdeo Rae of Boondoo, in the lands, Lotihatoo village, and that they were opposed by the prisoner Mohun and others. Mohun said, that the land was held by him from the mother of the former raja, and that he would not give it up. Mohun then wounded him very severely with a sword. The raja's party was armed with clubs. Mohun's sword was taken from him by Bodhram Chutra and Khodabux, and this is it.

Ghassy died of his wounds on the 17th July.

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No. 1, Bodhram.
,, 2, Chutra.
,, 4, Khodabux.

The evidence of the witnesses noted in the margin* is, that they were passing by and saw the dispute about the land, called Lotihatoo, and saw the prisoner Mohun wound the deceased Ghassy with a sword. These witnesses did not take the prisoner's sword from him.

† No. 3, Bheengoo.
,, 5, Booka.

Two more wayfarers† give evidence of similar purport.

‡ No. 6, Ram.
,, 7, Doolloo.
,, 8, Karaw Singh.
,, 9, Koondoo.
,, 10, Mandky.

These witnesses‡ are servants of the Raja Basdeo Rae and were by his orders tilling the land called Lotihatoo, when they were opposed by the prisoner Mohun and others of Hunta village. The prisoner attacked their fellow-servant Ghassy, and wounded him severely with a sword. One Dirip, their companion, was also badly wounded by one Madae of the opposing party. Mohun said, that he had got the land from the Mae Dewan, the mother of the former raja. There were only nine men of the raja's and about sixteen of the Hunta people.

§ No. 16, Boodhooram, native doctor.

This witness§ proves that the deceased Ghassy died by reason of his wounds.

The prisoner Mohun in his defence says, that the land in question is not of Lotihatoo, and has long been occupied by him. His nephew had sowed rice one day, and the raja's people came the next day with an armed force and sowed over his crop. The prisoner was told of this by his nephew and went alone to remonstrate, but was severely beaten by Bodhram, Chutra and Booka.

No. 19, Khoodee
,, 20, Pukloo.
,, 21, Jorunga.
,, 22, Jeet Rae.
,, 24, Tekait Rae.

For the defence, the witnesses named in the margin|| state, one with another (No. 19,) that Ram and others, about one hundred men came to the field, and that the prisoner on making remonstrance was badly beaten; (No. 20,) that prisoner lay insensible; that (No. 21,) the raja himself was present, that the field belongs to the prisoner's nephew Jholak, and that one Sonu was wounded by the raja, and died on the spot. The witnesses know nothing about Ghassy.

The jury whose names are entered below,¶ find the prisoner not guilty. They consider the evidence against him too undeserving of any confidence.

In this verdict I cannot concur. The witnesses on both sides were doubtless concerned in the very serious affray out of which this case has arisen. It is a fact as stated by the witnesses for

¶ Lalla Gujraj Singh, mooktear.
Nundram Dutt, ditto.
Ukhosee Luchminarain, ditto.

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the prosecution, that one Dirip was badly wounded, and as stated by those for the defence that one Sonu was killed on the spot. The witnesses are afraid to criminate themselves by admitting their own share in the transaction, and hence come discrepancies, which do not, however, destroy the credibility of their testimony to clear facts. There was an affray in which Ghassy was badly wounded. By whom was he wounded? He himself on oath answered, "by the prisoner Mohun." This is confirmed by the witnesses for the prosecution, and on this point the very ignorance of the witnesses for the defence is significant: could they fix it on any other than the prisoner, they certainly would.

The Raja Basdeo Rae and Dirip were under committal severally for the murders of Sonu and Dirip, but these prisoners have both died before trial. The magistrate's records of commitment are herewith sent, lest they should be required by the court. That the land in dispute was previously in the occupation of the prisoners' nephew is, I think, proved by the evidence for the défence. And that a large force was sent to oust the occupant, can scarcely be doubted. The prisoner was maintaining the right, by wrong means certainly, but still the right. On the other side was force and sheer oppression. But in the absence of proof that the prisoner was put to defend his life, the act of which I must find him guilty, is murder.

Believing as I do, however, that great provocation was given, I cannot recommend a capital sentence. I would therefore propose that the prisoner be sentenced to imprisonment for life with hard labor in irons.

The suppression of such affrays is very desirable. They are frequent and often fatal here. Usually they are provoked by intrusion on prescriptive rights. The lands belong to the tenant. He has a tenant-right of which he is extremely tenacious, and he has no ready protection more effectual than his own arm. From law courts he expects nothing but delay and expense, with finally a bare chance of success. I am persuaded that if our courts could give more speedy and efficient protection than is now practicable, affrays would become much less frequent. This matter deserves consideration.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The only conclusion we can come to, after perusing the evidence in this case, is that it is one of affray, in which the prisoner was resisting the lawless attempts of the raja's people to sow his lands. In the affray the prisoner used his sword and wounded the deceased, (who died two months afterwards in the hospital,) but was then disarmed, and bore on his person the marks of blows received in the *mélé*.

Whether the prisoner made use of his weapon in attack or defence is not clear, as the witnesses for the prosecution are evi-

dently so much biassed in the raja's favor, that we hesitate to place full reliance on their version of the story, which is entirely against the prisoner.

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In accordance with the general finding of the Court in cases of this description, we convict the prisoner of culpable homicide only, there being no reason to believe that he entertained any direct intention of taking life, and his acts may be attributed to the aggressive attempt of the other parties to sow land which the prisoner considered he had a right to hold. Under these circumstances, we sentence the prisoner to imprisonment with labor for the period of seven years.

PRESENT:

SIR R BARLOW, BART., AND J. DUNBAR, AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT,

versus

KALACHAND DASS (No. 2,) SOOKLALL (No. 3,) SHURUFFOODIN (No. 4,) AIBOODIN (No. 5,) JOOGUL KISHEN DASS (No. 6,) KOMUR ALLY (No. 7,) JUNESH MOHAMMED (No. 8,) NADOO (No. 9,) BHOLANATH SHOMADAR (No. 10,) RAJKISHORE SHOMADAR (No. 11,) KURRIMOODIN (No. 12,) PHELAN (No. 13,) AND RAGOONATH DASS (No. 14.)

Backergunge. 1854. September 26. Case of KALACHAND DASS and others.

The prisoners charged with wilful murder and affray attended with culpable homicide were acquitted, owing to the discrepant nature of the evidence.

CRIME CHARGED.—Nos. 2 to 13; 1st count, wilful murder of Woomer Gazi; 2nd count, affray attended with the culpable homicide of Woomer Gazi and the wounding of Shuruffoodin. No. 14, being an accessary before and after the fact to the above crime.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 18th day of July, 1854.

Remarks by the sessions judge.—This case was brought to light by the information of a neighbouring chowkeedar (witness No. 34, Woomer Gazi.) The parties had, it seems, come to an early compromise and had succeeded for some days in keeping the police in ignorance of the affair. The following is an epitome of the case as extracted from the recorded evidence.

Kalee Mohun and Gopee Mohun are joint sharers in a talook in Sotabarea, where they, each, have a cutcherry. One Bridge

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Summutdar was a joint ryot of theirs, who demised some time ago, leaving an infant son who is under the care of his uncle, the prisoner Raj Kishore.* For some months subsequent to the death of Bridge Summutdar, his homestead has been uninhabited. Kalee Mohun now wants to transfer that homestead to other parties; but Gopee Mohun insists that Bridge Summutdar's family shall still be considered the owners of it. A few days before the event which has given occasion for the commitment of the prisoners, Kalee Mohun's side had succeeded in settling Gour Chunder Kurt† and Hookooree Dass in the disputed house, but they were as quickly ejected by Gopee Mohun's party.‡ Another attempt seems to have been made on the day of the occurrence, when the adherents of the respective parties met on the contested ground and a skirmish, if not a regular fight, took place, in which Woomer Gazi on the side of Gopee Mohun, was killed and Shuruffoodin, one of Kalee Mohun's men, was wounded. The disputants then separated, and the body of Woomer Gazi was carried in men's arms to Gopee Mohun's cutcherry. At night it was put on board a boat, taken some distance, then landed and cut up, and the pieces being placed in two large jars, were thrown into the river and sunk.

* No. 11.

† Witness No. 24.

‡ 1, Jugo Mohun Dass.
2, Raj Mohun Dass.
3, Nilmadhob Dass.
4. Sheikh Ukbur.
5, Zuheer.
6, Reus Gazi.
7. Woomer Ally.
8, Lushkur.
9, Koresh Mahomed.
15, Bulram Dass.
16, Kanhaye Shomadar &
17, Ridoy Kishen Dass.

Such is the substance of the evidence produced in support of the charge. It must however be admitted that it is not all trustworthy. The parties had made up the matter and it was difficult to procure evidence, as all the persons living near the scene of the affray, were ryots of the talookdars, and therefore disinclined to reveal all they knew of an affair which had been completely compromised. Still it was certain that a fight had taken place and that a man had been murdered, and if the police in their zeal, that a good case should not miscarry for want of proof, have shown too great readiness to accept evidence which will not bear the test of scrutiny, that circumstance does not in my opinion destroy all reliance upon their proceedings, or invalidate such parts of the evidence as present no features upon which they can be impeached.

Besides the proved fact that a fight took place in open day, between the adherents of Kalee Mohun and Gopee Mohun, and that Woomer Gazi fell in that fight by a spear wound from Sooklall, and was carried away dead, there is, in my estimation, nothing more in the evidence, which is entitled to undoubted

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credit. The evidence of those parties* who casually saw the body lying uncovered in the open space of Gopee Mohun's cutcherry, visible to every passer-by, and of Gour Chunder Kur,† who affirms that he saw the body afterwards cut up and thrown into the river, and‡ of those who corroborate in a measure the statement of this witness, are, in my opinion, not altogether credible witnesses. The parties who saw the body laid out were not examined till several days afterwards, and what the clue was by which the police ascertained that they knew any thing about the case, is not to be traced. The evidence of Gour Chunder Kur,§ is too improbable and it disagrées in many circumstantial particulars with the evidence of those who have been produced to corroborate his statement. It is best then to discard altogether the questionable evidence, as to what became of the body after its removal from the scene of the engagement, and to confine the attention to the examination of those persons by whom the general facts of the affray and the murder have been substantiated. Those witnesses are named in the margin,|| and by them¶ I hold it to be proved that a fight of some sort took place, that Woomer Gazi, was killed in it by Sooklall, and that his body was carried away by some of the combatants in the direction, where both Gopee Mohun and Kalee Mohun have their cutcherries.

The truth of the evidence to those facts is further corroborated by the mofussil confessions of some of the prisoners,¶ by the admissions made by others* before this court, and also from the fact that neither the fight, nor the death of Woomer Gazi, is attempted to be denied by any of the prisoners. That Woomer Gazi is now dead may be further accepted as an undoubted fact from nothing being done to produce him or to account for what has happened to him, if the fight did not terminate his existence,

* Witness No. 18, Moonshee Haldar.
" " 19, Poornochunder Doree.
" " 20, Madhub Noopte.
" " 21, Mirtoonjoy Doss, and
" " 22, Dingur Chunder Doss.

† " " 24.

‡ Witness No. 25, Jorafodin Gazi.
" " 26, Ushkuo Sirdar.
" " 27, Ram Kishen Doss, &
" " 28, NundKishoreSomadar.

§ Witness No. 24.

|| Witness No. 1, Jugo Mohun Doss.
" " 2, Raj Mohun Doss.
" " 3, Nilmadhub Doss.
4, Sheikh Ukbur.
5, Zuheer.
6, Ram Gazi.
7, Oomur Ulli.
8, Lushkur.
9, Korish Mahomed.
15, Bulram Doss.
16, Kanhye Somadar, and
17, Reidoy Kissen Doss.

¶ Witness No. 3, Sooklall, and
" " 5, Aiboodin.

* " " 10, Bholanath Shomadar.
" " 11, Raj Kissore Shomadar.

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for if he were alive, both Gopee Mohun and Kalee Mohun, with whom a complete reconciliation took place, would be too ready to give up the living person of Woomer Gazi, as that would of itself dissipate all credit in any part of the evidence, and so secure the acquittal of their respective adherents.

'Holding then the fact of the fight and of the murder to be proved, I proceed to apply the evidence against each of the prisoners. Sooklall, Suruffoodin, Aiboodin, Joogul, Komur Ally, Janesh, Nadoo, Kurrimoodin and Phelan, have been each recognized as having been present while the fight was going on, by several witnesses, who have been consistent in their evidence at every stage. Against Bholanath and Raj Kishore, there are the same four witnesses—these all agree that the two prisoners were a little apart from the place, where the fight was going on. Of the personal presence of the prisoner Kalla Chand, during the fight, several witnesses gave evidence in the mofussil. Before the magistrate, the number was reduced to two, and at the sessions only one witness affirmed that he saw him on the spot while the affair was going on. Against Ragoonath, who is not charged with the affray, the evidence is that of witnesses No. 19, Poorno Chunder Daree, No. 22, Dingur Chunder Dass and No. 24, Gour Chunder Kur. The two former depose that they saw him in the cutcherry when the body of Woomer Gazi was lying there, and the last witness affirms that he was on the boat in which the body was removed, and from which after being cut up in pieces, it was thrown into the river.

The prisoners, No. 2, Kalla Chand Dass; No. 3, Sooklall; No. 4, Shuruffoodin; No. 5, Aiboodin; No. 6, Joogul Kishen Dass; No. 7, Komur Ally; No. 8, Janesh Mahommed, who calls himself Jan Mahommed; No. 9, Nadoo; No. 12, Kurrimoodin; No. 13, Phelan and 14, Ragoonath Dass, each pleaded an *alibi*. Prisoner No. 3, Sooklall, after the arrival of his witnesses, declined to have them examined. The witnesses, for the rest of the abovenamed prisoners, deposed to the statements severally made by the prisoners in whose behalf they were summoned, but such evidence is at all times of little weight, and contrasted with the evidence of respectable and unprejudiced eye-witnesses in direct refutation of the *alibi*, it is of no weight at all.

The prisoners, No. 10, Bholanath Shomadar and No. 11, Raj Kishore Shomadar did not deny that they were close to the fight, and their witnesses depose that they are not the engaged servants of either side.

The *futwa* of the law officer finds the prisoners, No. 2, Kalachand Dass; No. 3, Sooklall; No. 4, Shuruffoodin; No. 5, Aiboodin; No. 6, Joogul Kishen Dass; No. 7, Komur Ally; No. 8, Janesh Mohammed, who calls himself Jan Mohammed; No. 9, Nadoo; No. 10, Bholanath Shomadar; No. 11, Raj Kishore Shomadar; No. 12, Kurrimoodin and No. 13, Phelan, guilty of

affray, attended with the culpable homicide of Woomer Gazi and No. 14, Ragoonath Dass, with being privy to the same. 1854.

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Witness No. 5, Zuheer.

There is but one eye-witness* against Kalachand No. 2 at the sessions; but it is easy to see by what means he has been able to reduce the number of eye-witnesses against him, and to acquit him on the ground of the inadequacy of proof would be to allow corruption to gain the day over justice. The one eye-witness is, in my opinion, trustworthy. It is also evident from the confession of Aiboodin No. 5, and the admissions of prisoners, No. 10, Bholanath Shomadar, and No. 11, Raj Kishore Shomadar, that Kalachand did attend the men on his side and was present at the fight. This statement is further confirmed by Sooklall No. 3, who says that Kalachand was in the cutcherry at the time, and that he sent forth the men to keep possession of the disputed house.

In regard to the prisoners, No. 3, Sooklall; No. 4, Shuruffoodin; No. 5, Aiboodin; No. 6, Joogul Kishen Dass; No. 7, Komur Ally; No. 8, Janesh Mohammed who calls himself Jan Mohammed; No. 9, Nadoo; No. 12, Kurrimoodin and No. 13, Phelan, the evidence is complete. Sooklall gave the wound of which it is to be presumed, Woomer Gazi died, and it is chiefly in regard to him that I have thought it advisable to refer this trial. If the superior Court are satisfied with the evidence against him, he is deserving in my opinion of a severer sentence than I am competent to award. I recommend that he be sentenced to a term not less than ten years, and in regard to the other prisoners whose names are given in this para., I think that five years to Kalachand with labor and irons and three years to each of the rest, with a fine of 30 Rs. in lieu of labor, would be a suitable punishment.

I see grounds for differing with the law officer in regard to the prisoners, No. 10, Bholanath Shomadar, and No. 11, Raj Kishore Shomadar, and No. 14, Ragoonath Dass. As to the two first, they do not in their admissions inculpate themselves, and the evidence for the prosecution is rather exculpatory to them, than otherwise. In respect to the evidence of the witnesses, as to the presence of No. 14 Ragoonath Dass at the cutcherry when the body of Woomer Gazi was laid there, I have already said, that I do not think it is to be trusted. It was obtained many days after the investigation began, and is otherwise open to objection. I would acquit these three prisoners.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, and Messrs. J. Dunbar, and H. T. Raikes.)

Mr. J. Dunbar.—I concur generally with the sessions judge in the view he has taken of this case. Rejecting, on the grounds stated by the sessions judge, the evidence as to the disposal of

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the body, I see no reason to distrust the testimony of those witnesses, who have deposed to the fact of the fight between the hostile parties, and its fatal termination in the death of Woomer Gazi. That there was a fight is established by the evidence of the twelve witnesses, whose names are given in the margin of paragraph 5 of the judge's letter. The two first of these, distinctly depose to Woomer Gazi's having been speared by the prisoner, Sooklall. Several of the others depose to having seen the body of a man carried off after the fight and one witness, (Kanhaye Shomadar,) was fully satisfied that the body was that of Woomer Gazi, and that life was extinct, when he saw it carried past. Sooklall himself made confession of his guilt in the mofussil, and although he subsequently repudiated that confession, there is good reason for receiving it as true. The record shews that he was arrested, confessed, and forwarded to the sudder station, all in one day, the confession is proved to have been voluntarily made by the subscribing witnesses, and the prisoner appears to have been so hopeless of shaking the evidence against him, that at the trial he declined to examine any of the witnesses whom he had cited.

Upon the whole I think there is sufficient evidence upon which to found a very strong presumption that Woomer Gazi is dead, his death having been the consequence of a wound or wounds received in the encounter, between the adherents of the adverse parties, named in the beginning of the sessions judge's report, at the time and place indicated. With exception therefore of the three prisoners, Nos. 10, 11 and 14, in whose acquittal I concur with the sessions judge, I would convict the prisoners of affray attended with culpable homicide. I would sentence Sooklall, as proposed by the sessions judge to imprisonment for ten years with labor and irons, and all the others to imprisonment for three years with labor, commutable to a fine of Rs. 75 each.

Mr. H. T. Raikes.—The evidence of the eye-witnesses is so confused and indefinite, that in my opinion it leads to no certain conclusions affecting the guilt of the prisoners. There was a fight no doubt, but that Woomer Gazi was really present and killed in the *mélé* is not positively deposed to by any but the two first witnesses, and their accounts do not tally, neither do I understand how they saw and knew so much of what passed, while the other witnesses can give no satisfactory account of the same occurrences. Sooklall's mofussil confession should not, under such circumstances, be used against him, and as the very material fact of the body having been ever seen is so doubtful, I would acquit the prisoners.

Sir R. Barlow.—The evidence in this case, is similar to that given in others of alleged homicide coming from the Backergunge district.

One Woomer Gazi is said to have been killed, in an affray between two parties, about a house, belonging to the family, all the witnesses (save one) speak to having heard that he was killed. They saw a riot going on; but, *one only*, Raj Mohun, saw the deceased speared by the prisoner Sooklall, an up-country man, the others heard he had committed the deed.

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The chief witnesses, Juggo Mohun and Raj Mohun, differ considerably in the narration of what they know, regarding the alleged offence: Juggo Mohun saw no *mutual* affray; he did not see Woomer speared by Sooklall, Raj Mohun saw both parties armed with clubs and spears fighting, and also saw (that which no other witness in the prescribed column of the calendar saw) Sooklall spear Woomer Gazi.

The sessions judge considers the fact of Woomer's death by the hand of Sooklall, proved, he further thinks that the carrying off the corpse is established.

The evidence of witnesses, Nos. 18, 19, 20, 21 and 22, to seeing the body uncovered and lying in Gopee Mohun's cutcherry: that of witness, No. 24, to seeing the body cut up and thrown into the river, and of those who, in a measure, corroborate the said witness, is rejected, and in another part of his letter of reference, the sessions judge states that the evidence in support of the charge "is not at all trustworthy."

He discards the questionable evidence and confines himself to that portion of it by which the general facts of the affray and the murder have been substantiated, and relies principally on the twelve eye-witnesses named in the column prescribed, and upon the mofussil confessions of four of the prisoners.

It is to be observed that the twelve witnesses, called eye-witnesses, speak to having seen an *affray*; but *not* to the *murder* of Woomer by Sooklall, to which point, one only of the number, swears. There can be no doubt that there was a quarrel between the family, and some of the witnesses have deposed that one party had possession of the thatch of the house which was claimed by both, and that the other party endeavoured to get it from them. But that death ensued in consequence of the affray, which, it is alleged, then took place, is by no satisfactory evidence shewn.

The non-production of Woomer Gazi before the court, which would at once relieve *both* parties from the charge of murder preferred against them, is the only circumstance which tells against them: but in the absence of any evidence of actual death, it is not sufficient to convict the prisoners. If indeed it were proved, that Woomer was killed, the punishment which the sessions judge suggests, should be awarded to the prisoners, is quite inadequate.

I am not satisfied, by the evidence for the prosecution, of Woomer's death; this must, in the first place, be proved. As to the wound of Shurruffoodin, it is so trifling, that no medical opi-

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nion appears to have been asked upon it. The only point which remains to be noticed is the so-styled mofussil confession of Sooklall. This man is an up-country man, his confession has been taken down in the Bengallee character, and contains a long history of the disputes regarding the right to the house and the claims of each parties, the knowledge of which he obtained during his residence with Jogul Doss whose adopted son he purports himself to be. Such is the confession, which upon the face of it and from its structure and composition, I deem to be (unsupported by any extrinsic evidence) a very unsatisfactory document. In my view of the case the gravamen of the charge being removed, no punishment can be awarded for the minor offence, assault, unaccompanied with aggravation. I concur with Mr. Raikes, in the acquittal of the prisoners.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges*.

TRIAL NO. 4.

GOVERNMENT,

versus

OODUN RUJWUR (No. 1,) PYROOAH RUJWUR (No. 2,) THAKOOREE RUJWUR (No. 3,) TIRBHOOWUN ALIAS BHOOWUN RUJWUR (No. 4,) AND SOOMEREE RUJWUR (No. 5.)

TRIAL NO. 5.

ROOPUN AND OTHERS, AND GOVERNMENT,

versus

OODUN RUJWUR (No. 6,) BUNDHOOA RUJWUR (No. 7,) PYROOAH RUJWUR (No. 8,) THAKOOREE (No. 9,) TIRBHOOWUN ALIAS BHOOWUN (No. 10,) SOOMEREE (No. 11.)

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The prisoners were convicted in two separate cases of dacoity, one being a charge of dacoity with plunder, and the other of dacoity with wilful murder and wounding. They were convicted on the evidence to their recognition, and sentenced as recommended by the sessions judge.

CRIME CHARGED.—*Trial No.* 4.—1st count, dacoity and plunder of property valued at Rs. 2-5, belonging to Gaindah Kullal and his servants; 2nd count, belonging to a gang of dacoits within the meaning of Act XXIV. of 1843.

Trial No. 5.—1st count, dacoity and plunder of five sheep valued at Rs. 2-8, belonging to Roopun Gwalla, attended with the wilful murder of Kooheelee Kahar and severely wounding Khoojooa alias Boodhoo Gwalla and slightly wounding Gunesh and Bala Gwalla's witnesses; 2nd count, belonging to a gang of dacoits within the meaning of Act XXIV. 1843.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Nowada.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 28th July, 1854.

Remarks by the sessions judge.—During the night of 23rd April last, the liquor shop, a short distance outside the village of Rookhee, was attacked by a band of twenty to twenty-five robbers armed with *ghurassas* or battle-axes and loaded clubs, who plundered it all of the liquor and grain it contained, lights were lit, when several of the robbers were recognized by name and some by personal appearance. This occurrence forms a distinct commitment on the prosecution of Government, but as what followed of a more heinous character,

Witness No. 1, Chumun Kullal,
,, ,, 2, Mungui, ditto.
,, ,, 3, Chumun, ditto. 2d

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happened a like distance outside the village, and the one occurence immediately followed the other, the two occurrences and their consequent separate commitments will be best viewed together.

From the liquor shop the robbers went direct to the sheepfold about a like distance outside the village and plundered it of five sheep. Khoojooa alias Boodhoo Gwalla the shepherd, and one of the prosecutors was the only person there. The robbers struck him whilst asleep, as he says, a severe blow with a heavy club which fractured the bone of the right arm and which after a month's treatment in hospital has left a deformed limb. Khoojooa, a young lad, ran off at once, was too frightened to recognize any one, and on reaching the village, fell down senseless. By this time, the alarm had been set up, Kooheelee Kahar the deceased ran up to the rescue followed by the seven eye-witnesses. The robbers first cut down Kooheelee, wounded Gunesh (witness No. 1) severely, and giving Bala (witness No. 2) a slight club blow on the head, went off.

Witness No. 20, Chumun Kullal 1st.
" " 21, Mungar.
" " 22, Chumun, 2nd.
" " 1, Gunesh Gwalla.
" " 2, Bala ditto
" " 3, Jaddoo Roy Bubhun.
" " 4, Chuttoo Gwalla (deceased.)
" " 5, Pokhun Dosadh
" " 6, Soobun Mooshar.
" " 7, Gundowree Putwar.
Witness No. 11, Doctor Diaper.

Witness No. 11, Doctor Diaper.

Gunesh had a narrow escape. "He had a vertical scar on the right side of the abdomen of about six inches in extent, apparently the result of an incised wound. From its situation there can be no question that had it penetrated three-fourth inch deep, the cavity of the abdomen would have been exposed and nearly all his intestines come out, and death would have been the ultimate result. Kooheelee Kahar entered hospital on the 26th April last with an incised wound, a perfect gash on the right side of the top of the head extending from before backwards seven inches, nearly cleaving skull and brain in two as it is all but separated (hanging by skin) a large piece of bone, the size of the back of a *cutla* fish. The man also presented an incised wound about two inches long on the front of the right leg, and several scratches and bruises on different parts of the body. He died in convulsions on 27th April. A few hours after death the scalp was dissected away from the skull and a piece of bone (here produced) detached, the brain was found soft, pulpy and completely disorganized. The ordinary *ghurassa* or battle-axe now in court was a likely instrument to have produced the above injuries." Kooheelee was speechless until he reached the hospital when, strange to say, he gave his deposition at length before the magistrate on the 27th, the day of his death,

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At the plunder of the liquor shop Chumun Kullal (witness No. 1) from the first recognized by name Oodun prisoner No. 1 and 6, Pyrooah prisoner No. 2 and 3, Thakooree prisoner No. 3 and 9, Tirbhoowun prisoner No. 4 and 10, Soomeree prisoner No. 5 and 11 of Pultoo Chuq by name and added that these were Rujwurs of Cazie Chuq whom he could also recognize by person, and when subsequently several Rujwurs of that place were crowded together, he brought out Bundhooa prisoner No. 7 and 3, others released by the deputy magistrate. He saw *ghurassas* in the hands of Oodun, Thakooree and Bundhooa; Mungur (witness No. 2,) also recognized all the prisoners but Bundhooa, but before the police he did not name Thakooree and Soomeree. He also says he saw four *ghurassas* in the robbers' hands one in Thakooree's and the rest he don't remember, and Oodun had a *lohanger* or loaded club; Chumun Kullal 2nd, only recognized Oodun and Mungur absconded, Oodun kicked him. He saw four *ghurassas* in the robbers' hands, two of which he recognized in Oodun and Mungur's hands.

The six eye-witnesses,* No. 4 having deceased before trial in the sessions court, depose in this court to having recognized all the prisoners except Pyrooah prisoner No. 8, whom all had alike previously named both before the police and deputy magistrate during the outrageous violence at the sheepfold. They never named Kooheelee's assailants to the police, but when questioned by the deputy magistrate and voluntarily before this court, they named them at random amidst general contradiction and prevarication. To the deputy magistrate and this court Gunesh (witness No. 1) named Thakooree as Kooheelee's assailant, although he distinctly told the police he could not name any one. Before this court he did not know who struck him the severe cut he received, yet for this also he had named Thakooree to the magistrate. Bala (witness No. 2,) could not name them to the magistrate, yet he told this court Bundhooa struck Kooheelee the *ghurassa* blow on the head and Thakooree a blow with a loaded club on the side. Juddoo (witness No. 3,) in reply to the deputy magistrate's question if Bundhooa had struck Kooheelee, replied he only saw Oodun and Thakooree, whilst to this court he detailed Oodun as striking the deceased on his back, Thakooree on his head, and Bundhooa on his right foot. To the magistrate Pookhun (witness No. 5,) only named Oodun and Bundhooa. Soobhun (witness No. 6,) only heard from the deceased that Bundhooa had struck him and Gundowree (witness No. 7,) did

* Witness No. 1, Gunesh Gwalla.
,, ,, 2, Bala ditto.
,, ,, 3, Juddoo Roy Bubhun.
,, ,, 4, Chuttoo Gwalla (died.)
,, ,, 5, Pokhun Dosadh.
,, ,, 6, Soobhun Mooshur.
,, ,, 7, Gundowree Putwar

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not particularly name any one, yet all three adopted Juddoo's (witness No. 3,) details before this court.

Kooheelee's deposition before the magistrate alone named Bundhooa as having struck him on the head, and distinctly declared that he had not recognized Bundhooa's companions. It was in itself an extraordinarily consistent statement of the occurrences for one to have given, who had continued speechless after them until he reached the Hospital, and who died only a few hours after having given it on the same day the 27th, that the greater portion of the investigation itself was being held at a great distance in the interior, and of which necessarily he could not have been cognizant at the time, still it is far from satisfactory. All the witnesses recognized all the prisoners, except Bundhooa both by name and person, as near neighbours residing in the village of Pultoo Chuq, and Bundhooa by person only, as residing two or three miles off at Cazie Chuq. How then came the deceased to omit naming those he must have been most familiar with, and name only one whom the witnesses could not? Futeh Kahar the deceased's father, prosecutor, admits that he himself had not known Bundhooa by name prior to the occurrences, and he cannot say how his son did, and the only probable explanation that has been given and then only on hearsays is from Juddoo (witness No. 3.) who had heard that the deceased must have met Bundhooa at the liquor shop and thus have become acquainted with him.

The day of the night of the occurrence there had been an assemblage of Rujwurs at Thakooree's where the within witnesses saw all the prisoners, ostensibly congregated together about one Tota's marriage ceremony at Rewar, six miles off. Thakooree first set up an *alibi* grounded on his presence with the ceremony which having been denied, he set up a different *alibi* before the magistrate, which he did not again repeat before this court.

Witness No. 13, Nem Gwalla.
" " 14, Karoo Kahar.
" " 15, Shaikh Boodhoo.
" " 16, Dipoo Gwalla.

Witness No. 17, Akul Rujwur.
" " 18, Soobratee Kullal.

The prisoners have always pleaded *not guilty*, have never set up any thing but the most frivolous defences which, before this court, resolve themselves generally into charging Chumunlal Kullal with spite for not continuing to drink at his liquor shop, and into petty joint disputes with Roopun prosecutor and others about cutting grass in which even Bundhooa joins. They cited no witnesses. The prisoners were apprehended as follows at different places on various dates. Oodun on 27th April. Bundhooa on ditto ditto. Pyrooah 6th May. Thakooree, as reported with a *ghurassa,* on ditto ditto. Tirbhoowun 8th May and Soomeree 11th May.

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In this as in many serious cases, more especially belonging to the Nowada division, Rujwurs will be invariably found banded together in collusion with the Rujwur chowkeedar. The Rujwurs as a class are as violent and lawless as they are needy and perhaps somewhat oppressed by the other classes. The usual consolation they give their victims is, that it is the Rujwaree *hookum*. Horil chowkeedar of Rookhee, the place of occurrence, is Pyrooah, prisoner No. 8's father, cousin to Ghumundee another chowkeedar, Tirbhuwun prisoner No. 10's father. I find Horil's statement before the police, No. 63 of 7th May. He was forwarded to the deputy magistrate, but I do not gather from the record how he has been disposed of. He seems so much feared that all the Rookhee witnesses have done their best before this court to screen both father and son. Of the other prisoners Oodun prisoner No. 6, another chowkeedar is Soomeree prisoner No. 11's father, and both Bundhooa prisoner No. 7 and Thakooree prisoner No. 9, also are chowkeedars. The object of plunder in the cases under trial could only have been to provide means for a carousal, and where so many chowkeedars were concerned, it must have been on a large scale, and one they must have been prepared to carry out, with a high hand. Violence even in petty trifles when opposed, is the characteristic, and not the exception amongst Rujwurs as serving to maintain their rule. Without this view of their character and connections the occurrences under trial would ordinarily seem unnatural and preposterous. No attempt have been made to trace out this carousal. It could scarcely have been expected of the Rookhee people after the manner in which they had been punished, and the police reached the spot too long afterwards, the thannah being distant fourteen miles, the inquiry not commencing until the 26th.

Direct proof of the prisoners' guilt rests solely on their recognition, during the attack on the liquor shop immediately followed by that on the sheep-fold. Of the two occurrences themselves, and their cruel results, for they nearly ended in two murders instead of one, there can be no doubt. The evidence to the recognition at the sheep-fold before this court is of a most exaggerated character. It was a dark night and the little the witnesses could have distinguished, as in the hurry of the moment they ran up, following the deceased, must have been of the most indistinct character and that Gunesh (witness No. 1,) and Bala Gwalla (witness No. 2,) were at least present on the occasion, their own wounds vouch for. These six witnesses' evidence before the police were far more natural. They then

Witness No. 1, Gunesh Gwalla.
,, ,, 2, Bala Gwalla.
,, ,, 3, Jadoo Roy Babhun.
,, ,, 4, Chuttoo Gwalla (died).
,, ,, 5, Pokhun Dosadh.
,, ,, 6, Soobhun Mushar.
,, ,, 7, Gundowra Putwar.

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only generally recognized the prisoners by voice and sight. The two wounded witnesses, Gunesh and Bala, did not even recognize their own assailants, but as time went on, and one court followed another, no exaggeration was too great for their sight, though at the same time their contradiction and exaggeration are so palpably absurd, as to place them beyond the probability of having been tutored, even had there been reason to suspect any thing of the kind, which I do not find in either case. I therefore reject their testimony in toto as to their professed knowledge of any particular act of each prisoner, but consider their recognition of them generally at the time of the occurrence, according to their original statements, the most truthful. I regard the recognition of all the prisoners, Bundhooa by person and the rest by name, at the liquor shop as truthful. Chuman (witness No. 20,) has always given the fullest and most consistent evidence, and is the most intelligent of the three. The other two appear to have been much frightened and the last is a mere youth. Had their evidences been tutored, those the two last would scarcely have been so defective. The evidence to the recognition of all the prisoners assembled at Thakooree's, prisoner No. 9, during the daytime, also stands good. Taking all these circumstances under one common view, as corroboration of one another, I convict Oodun prisoner No. 1 and 6, Pyrooah prisoner No. 2 and 8, Thakooree prisoner No. 3 and 9, Tirbhoowun prisoner No. 4 and 10, Soomeree prisoner No. 5 and 11, of the dacoity and plunder of property, valued at Rs. 2-5 belonging to Gaindah Kullal and his servants, Bundhooa prisoner No. 7, having I think been erroneously omitted from this commitment, and all the above-named prisoners including Bundhooa prisoner No. 7, of dacoity and plunder of five sheep valued at Rs. 2-8, belonging to Roopun Gwalla, attended with the wilful murder of Koobeelee Kahar, severely wounding Khoojooa alias Boodhoo Gwalla, and also wounding Gunesh and Bala Gwalla's, witnesses, and I would select for punishment as the leaders, Oodun prisoner No. 1 and 6, Bundhooa prisoner No. 7 and Thakooree prisoner No. 3 and 9, both from their having been seen at the liquor shop by Chumun Kullal (witness No. 20,) with *ghurrassas* in their hands, the circumstances which connect them with these occurrences, their being chowkeedars, and all the remaining prisoners only sons of chowkeedars, as also from their personal bearing and appearance, and would recommend their being sentenced to imprisonment for life in the Allipore jail and the remaining prisoners Pyrooah prisoner No. 2 and 8, Tirbhoowun prisoner 4

Witness No 20, Chuman Kullal 1st.
" " 21, Mungur ditto.
" " 22, Chuman ditto 2d.

Witness No. 13, Nem Gwalla.
" " 14, Karoo Kahar.
" " 15, Shaikh Boodhoo.
" " 16, Dipoo Gwalla.

and 10, and Soomeree prisoner No. 5 and 11, each to fourteen years' imprisonment in labor, irons and banishment.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)—The sessions judge, in his letter of reference, has given a very full and detailed account of the evidence adduced against the prisoners. The proof against them, in both cases of robbery, depends entirely on the credibility of the witnesses, who identified the prisoners on those occasions.

We concur generally with the sessions judge in the opinion expressed by him regarding the value of this evidence; there is no reason to believe the witnesses were tutored, and their anxiety to prove more than they are likely to have known, has very properly placed the sessions judge on his guard against trusting too far to the particulars detailed by them, and led him to consider the proof sufficient only to establish the recognition of the prisoners as the perpetrators of the crime with which they are charged.

We uphold the conviction, and on the whole, the measure of punishment proposed, under the circumstances of the case, appears to us just and proper: sentence will issue accordingly.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT AND JOOGUL CHRISTIAN,

versus

CHYETUNNO CHRISTIAN (No. 1,) AND MUSST. RUNGUN MALLAH (No. 2.)

Backergunge.

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Capital sentence was only not passed on account of the degree of proof, not being considered such as to justify an irrevocable sentence.

CRIME CHARGED.—1st count, wilful murder of Mussumat Kokillah; 2nd count, being accomplices in and privy to the above crime.

Committing Officer.—Mr. H. A. R. Alexander, officiating Magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 6th September, 1854.

Remarks by the sessions judge.—The deceased Kokillah was a girl of ten or twelve years of age, and was married rather less than a year ago, to the male prisoner, Chyetunno Christian. The female prisoner, Rungun Mallah was sister-in-law to Chyetunno, with whom he had lived since she became a widow, which was for some four or five years. The terms* on which she lived with her brother-in-law would have been more becoming had she stood in the relation of wife to him, but notwithstanding so completely did she consider her-

* Witness No. 5, Chorramonee Holdar.
" " 6, Tilluck Chung Jeonee.

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self entitled to Chyetunno's exclusive affections, that she would on no account allow them to be shared, even with his lawful wife. This illicit intercourse was carried on after his marriage, and the Christians* of the village had fined the prisoner for the scandal caused to their community by his behaviour. The body of Kokillah, found murdered, has put a check to this state of affairs, and brought matters to the present serious issue.

* Witness No. 9, Nuddyram Christian.
,, ,, 10, Surroop ditto.
,, ,, 11, Surrien ditto.
,, ,, 12, Nagur ditto.

On the morning of the 5th July, as the villagers† began to move about, the body of Kokillah was found in a hole with shallow water, in a complete state of nudity, except that the end of a sheet was bound round the ankle of one leg, one ear was split, or cut, or smashed, (it does not quite appear which) the mouth was full of blood, and blood issued from the ears, and those‡ who observed the body more closely, saw black marks on either side of the gullet, indicating that the murder had been caused by strangulation. These things leading to a belief that a murder had been committed, and the prisoners being naturally suspected of it, the villagers put them and the body on board a boat and hastened with them at once to the station. Arriving at the house of the Rev. Mr. Page, the Baptist Missionary, intimation of the affair was sent by him to the magistrate. An investigation was set on foot, and the prisoners were sent for. They had in their defence before the kotwallee darogah, denied the murder, and affirmed that the deceased must have fallen into the water in a fit, but when an officer went to Mr. Page's house, where the prisoners were, to take them to the court of the magistrate, it would seem that the male prisoner became terribly alarmed, and admitted to one of his fellow Christians,§ that he saw his sister-in-law do the deed. Mr. Page|| was told this immediately, and Chyetunno again made the same statement before him. The female prisoner on her part denied that the murder was committed by her, and said that Chyetunno did it in her presence.

† Witness No. 8, Panch Cowree.
,, ,, 13, Kumcheeran.
,, ,, 14, Sheebram, Chowkeedar.

‡ Witness No. 8, Panch Cowree.
,, ,, 9, Nuddyram.
,, ,, 10, Surroop and others.

§ Witness No. 8, Panch Cowree.
|| ,, ,, 7.

When taken before the deputy magistrate, to whom the investigation had been entrusted, the same recriminations followed. The statement of the male prisoner was, that "Rungun lived with me, and a criminal intercourse existed between us. She one day said to me, if you sleep

Witness No. 3, Kally Comar Dhur.
4, Dhurmonarayn Doss.

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with Kokillah, I will kill her. On Tuesday night, at about 9 o'clock, calling Kokillah out of the house, Rungun took her under a mango tree, on the west bank of the tank adjoining my house, and there she, in my presence, throttled her. My wife never uttered a syllable and she expired then and there. I saw this and I sat me down. Rungun threw the body in a hole and went away. I felt great remorse for the fate of my wife, and I stayed at the place to keep watch that no animals might eat the body; I passed the whole night in this way, I did observe the black marks on the body but I said nothing of them at the time, fearing that Rungun might decamp. The ear was bitten off by a crab while the body lay in the hole, it swam away as we took up the body, I was afraid to tell all this to the darogah, so I said my wife fell into the hole, I have also told our clergyman all I have stated here."

The statement of Rungun was, that on Tuesday night at 9 o'clock, Chyetunno took his wife Kokillah to the west side of the tank and there throttled her, I was on the east bank of the tank, and hearing her scream, I went up to Chyetunno and forbad him to murder his wife, but he threw me off, and accomplished his purpose. He then threw the body in a hole and dragged me home, we then went to sleep each in our own place. Early the next morning the villagers assembled and suspected that there had been murder. Chyetunno was tied and put on board a boat and there his hands were loosened, I wanted to confess on the spot, but Chyetunno told me not, at length I was sent in, and Chyetunno and the prosecutor told me to say that Kokillah fell into the hole.

On their trial at the sessions, they both maintained that Kokillah fell into the hole in a fit.

The prisoner Chyetunno denied having made the statement recorded as his by the deputy magistrate, and called three witnesses to prove that the deceased was subject to fits. They however say, that they are not aware of any such thing.

The female prisoner being asked, after her confession before the deputy magistrate was read aloud to her, whether she made it, replied distinctly that she did. Being asked which of her two statements, her foujdary or her sessions one, was the true one, she said the latter was the true one. On being asked why she made a statement contrary to the truth before the deputy magistrate, she affirmed that she never made the statement imputed to her.

The only direct evidence, as to the degree of participation taken by each prisoner in the crime, is their respective confessions. Each allows that the deceased was killed by strangulation, no one but the two were present at it, both left the house with the deceased, both witnessed the murder, neither did any thing effectual to rescue the girl or to obtain aid to save her

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life, and both kept the matter secret till alarmed at the probable consequences of an approaching discovery of the truth, they simultaneously charge each other with the crime, in the hope of averting its consequences.

When the medical officer saw the body, he was unable, so his report says, to examine it, owing to its putrid state. The kotwallee darogah's report is silent as to any marks about the neck, probably from the same cause which has deprived the case of a professional *post mortem* enquiry. The body was swollen it appears to three times its natural size when Dr. Scanlon saw it, and it is not surprising that in that state the darogah should have failed to observe whether there were any marks on the neck or not. Indeed from the very first the marks could not have been very distinct, for many persons saw the body without perceiving the marks, nor is it likely, from the way that the murder was effected, which was probably partly by pressure of the throat and partly by suffocation from drowning, that any very distinct marks would be left on the throat. However, the want of a proper *post mortem* examination is rendered of little consequence, as the prisoners' confessions supply the best and the most undoubted evidence as to the cause of death.

The verdict of the law officer is, that the prisoners are guilty of wilful murder, on violent presumption, and of privity on full legal proof, and that they are liable to punishment by *akoobut.*

There is not in my opinion sufficient evidence to bring in the parties guilty of wilful murder. The presumption is very strong that they both assisted at it, but it is not impossible that only one of them did it. The question then is, who did it, and who looked on? There is no means of determining this, and therefore the parties cannot, I think, be legally convicted of more than privity. But their conduct before, at the time and after the deed, shows such unity and evinces, from first to last, the existence of a thorough understanding between them, that both were clearly, designedly present at, and consenting to the cruel and predetermined murder, and are deserving of punishment, the very highest, short of death, which it is in the power of the superior Court to award. It is my recommendation that, that sentence may be awarded.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court concur with the *mooftee*, and find both prisoners guilty of murder on violent presumption. There is evidence that an illicit intercourse existed between them, for about a year before the marriage of the male prisoner to the deceased. There is evidence that when the corpse of deceased was discovered in the pond, near the male prisoner's dwelling, (with whom the female prisoner resided,) that marks of strangulation were seen on the neck, and blood issuing from the mouth and the nose. The prisoners have ac-

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October 11.

Case of CHYETUNNO CHRISTIAN and another.

cused each other of the murder by strangulation, and confessed to seeing the crime perpetrated, though both at first declared, as at last they again averred, that the deceased was subject to fits, and must have fallen into the water when so attacked. The appearances on the corpse disprove these statements, and there is no evidence that deceased was subject to fits of giddiness. The evidence of Mr. Page, the Baptist Missionary, who is the pastor of the prisoners, and who married the deceased to the male prisoner, evinces that the deceased was a strong hale girl of thirteen or fourteen years old, and that the female prisoner alone could not have murdered her. The circumstantial evidence is, therefore, violently presumptive that both prisoners were concerned in the murder.

The Court cannot concur with the sessions judge in convicting of privity to murder only, and then passing a sentence of imprisonment for life on the prisoners, as guilty of a more heinous crime. They convict both prisoners of murder, on violent presumption, and sentence both to imprisonment for life; the male prisoner in transportation; the evidence against them not amounting to that degree of sufficiency which would warrant the irrevocable sentence of death. See case of Bhagbut Gurrain versus Kalee Churn Surnokar, March 29, 1851, N. A. R. and of Subessur Bonick, February 14, 1852, N. A. R.

The Court observe, for the future guidance of the sessions judge, that the confessions of the prisoners taken before the deputy magistrate, should have been filed in original in the record of the trial in sessions, and copies filed in the record of the magistrate's court. Par. 6, No. 6, Circular Order, dated 16th July, 1830.

Purneah.

1854.

October 12.

Case of JULPEEDUT JHAH and another.

PRESENT:

B. J. COLVIN, ESQ. *Judge.*

GOVERNMENT AND OTHERS,

versus

JULPEEDUT JHAH (No. 1,) AND BABOOLAL ACHARGE (No. 2.)

The prisoners were convicted as they had been named on the previous trial of other parties accused of the same offence.

CRIME CHARGED.—1st count, being accomplices in the wilful murder of Pearee Jhah; 2nd count, being accomplices in maliciously burning down the houses, property, grain, &c. of Eklal Jhah; 3rd count, being accomplices in the riotous assault with forcible plundering and destruction of property (not amounting to dacoity) of Eklal Jhah, valued at about Rs. 4000; 4th count, being accomplices in the wounding with intent to murder Gopee Jhah.

1854.

October 12.

Case of JULPEEDUT JHAH and another.

Committing Officer.—Mr. H. Doveton, deputy magistrate Mudypoorah.

Tried before Mr. G. Loch, officiating sessions judge of Purneah, on the 21st June, 1854.

Remarks by the officiating sessions judge.—On 7th December, 1853, the prisoners accompanied a large body of armed men, headed by Heah Jhah, and attacked the prosecutors Eklal Jhah's house, in Mouzah Sitohur. They commenced destroying the property, Eklal Jhah concealed himself, but as Pearee Jhah, a brother of the prosecutor, endeavoured to escape, he was cut down and died the same night from the effects of his wounds. The prosecutor, Gopee Jhah, was also beaten and wounded, and his effects plundered, and the rioters, after the pillaging the premises, carried off property to the value of 4000 rupees, and set fire to one house, from which the fire communicated to the neighbouring houses, twelve of which and three golahs, full of grain, were destroyed. The prisoners were recognized by the witnesses noted in the margin,* and though they plead not guilty, stating, Julpeedut Jhah, that he was at Sukonuggur, three cos distant, and Baboolal Acharge that he was at Nathputty, five cos from his house, yet there can be no doubt that both of them were present and aided and abetted in the riot and plunder. On 28th March 1854, the parties noted in the margin† were convicted by the court of Nizamut Adawlut, as implicated in this case, and sentenced, as shewn opposite their names. In concurrence with the law officer, I convict the prisoners Julpeedut Jhah and Baboolal Acharge of the charges on which they were committed, but as they acted a subordinate part in the riot, I would recommend that a sentence of seven years with labor and irons be passed upon them.

* Prithnath Jhah.
Lullit Jhah.
Modee Jhah.
Hurry Jhah.

† Heah Jhah and Hulvee Jhah fourteen years each in banishment.
Bhugwan Tewarry and Hurburn Singh, ten years each.
Roopnarain Doss and Hyburn Acharge seven years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin). Having compared the evidence given on the former trial, in which both the prisoners were named, with that recorded on the present occasion, I concur in the conviction of the prisoners and sentence them as proposed.

PRESENT:
H. T. RAIKES, ESQ., *Judge*.

GOVERNMENT AND MUSST. FOOLEE,
versus
SHEIKH ASSOO MUNDLE.

Dacca.

1854.

October 13.

Case of SHEIKH ASSOO MUNDLE.

Prisoner convicted of culpable homicide, sentenced to 7 years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Wilful murder of Sheikh Pyzaree, the husband of Musst. Foolee, prosecutrix.

CRIME ESTABLISHED.—Culpable homicide of Sheikh Pyzaree.

Committing Officer.—Mahomed Nazem, principal *sudder* ameen.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 2nd August, 1854.

Remarks by the sessions judge.—From the evidence it appeared, that the prisoner, who is related to the prosecutrix, to the witnesses and the deceased, had some quarrel with the latter about a path, and the gomashtah or other village authority, decided against the prisoner. Shortly afterwards, the prisoner's cattle strayed, or were driven into a field belonging to the deceased and his brother, and on deceased interfering, the prisoner struck him a blow on the head with the branch of a tree, which caused death the next day.

There were some slight discrepancies in the evidence, but of the principal fact, the death of the deceased at the hands of the prisoner, there could be no doubt.

The prisoner declared the whole charge a fabrication. He called witnesses who established nothing in his favor.

The law officer found the prisoner guilty of culpable homicide, in which finding I concurred. There was no evidence that the prisoner intended to kill the deceased.

The civil surgeon described the wound as most extensive, and the club, or branch of a tree, with which it was inflicted is very heavy. Had I not had some doubts of the degree of provocation offered, I should have referred the case, for a more severe sentence than I am competent to pass.

Sentence passed by the lower court.—To be imprisoned for the period of seven (7) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The evidence leaves no doubt that the prisoner struck the blow which killed the deceased, the woman Dunneea, who saw the prisoner strike the deceased, is confirmed by others who saw the prisoner go and return from Pyzaree's house with the club in his hand, and found Pyzaree senseless as deposed to by her.

The prisoner only pleads that he did the deceased no injury, but attempted to prevent him and his brother from quarrelling and fighting, and heard the next day of the former's death.

I see no reason to interfere with this conviction and reject the appeal.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

JOOGUL KISHORE DEB AND GOVERNMENT,

versus

RUKHA DHOOBEE (No. 10,) CHOITAH CHUNG (No. 11), LUKHUN CHUNG (No. 12) AND BHOLAH DHOOBEE (No. 13).*

Mymensingh.

1854.

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Case of RUKHA DHOOBEE and others.

A party who confessed to having been one of the gang, (although he remained outside,) who committed a dacoity in which an inmate of the house was so severely wounded as to die some weeks afterwards in consequence of the injury received, was sentenced to imprisonment for life.

CRIME CHARGED.—1st count, prisoners Nos. 10 and 11, dacoity in the house of the prosecutor and plundering therefrom cash Rs. 6-4, and property consisting of gold and silver ornaments, brass, cloth and a box, &c. valued at Rs. 104-4-6, and murdering Sorosuttee Dashea; 2nd count, knowingly receiving and possessing property obtained by the above dacoity. Prisoners Nos. 12 and 13, 1st count. The above first count; 2nd count, being accomplices in the above first count; 3rd count, privity to the above first count.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 26th August, 1854.

Remarks by the sessions judge.—It is in evidence that on the night of the 15th Choitro last, or 26th March, 1854, a party of about sixteen or seventeen persons attacked the prosecutor's house, entered therein and breaking open a desk, carried it off to a distance, took out the cash and property therefrom, left it and decamped; that as they entered the house one Sorrosuttee Dashee, a servant girl of Gobind Newgee, who occupied the same premises, came out and was immediately wounded by them. The prosecutor was absent from home and his servant, Basheeram Chung Sircar (witness No. 47) reported at the thannah of Gabtullee that a theft was committed; but from the daring manner in which the crime had been perpetrated, the parties having been described to have disfigured their faces and with cloths bound round their faces and to have been armed with *lattees*, the magistrate held it to be a dacoity and not theft. The desk was found at about an hour's distance lying broken, but no clue could then be obtained as to the actual perpetrators.

Some days afterwards, the darogah's private mohurrir, Ramnarain Chowdree, having heard that a *saree* and an arcot rupee, answering the description of those lost by the prosecutor, had been pledged by Buddeenath Nundee and others to Muneeram Sircar and Ramdhun Sircar, informed the darogah of the matter, and this was the first step which led to the apprehension of the prisoners under trial.

* Acquitted by the Lower Court.

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Muneeram Sircar made over the articles to the darogah, which were immediately recognized by the prosecutor to be what he lost. Buddeenath, when called upon, stated that he purchased them from prisoner No. 12, and suspicion having been then attached to Nos. 12, 10 and Buddeenath, they were apprehended and No. 10, gave up some property, saying that Nos. 11, 12 and others, had committed the dacoity and gave him these articles to keep, which he concealed in a chest. No. 11 also gave up some articles, saying that No. 12 and others committed the dacoity at the prosecutor's house, and gave them to him to keep, and he accordingly placed them underground in the cow-house in a garden, and urged enmity with No. 10, as the cause of his being charged. Prisoner, No. 12, appeared before the magistrate, who sent him to the darogah, and he there admitted that he pledged the *saree* and the arcot rupee, which he stated was his own property, having got the *saree* in a lottery. No. 13 denied the charge, and stated that he heard that a dacoity was committed at the prosecutor's house by No. 12 and others, and that No. 12 had given some articles to No. 10 to keep.

Before the magistrate prisoner, No. 10, admitted that he, Nos. 11, 12 and others had entered the prosecutor's house and committed the dacoity, but he did not go near, and that No. 12 gave him some articles, which he gave up to the police. No. 11 also admitted that No. 12 and one Kangaleah Joogee gave him some articles, which he gave up, but he did not himself commit the crime. No. 12 denied the charge, and stated that his confession was extorted by the police, and he was instigated by Buddeenath's father to say that he gave him the *saree* and the arcot rupee. No. 13 denied the charge, and stated that he had been suspected merely because No. 10 was his relative.

Before the sessions court No. 10 denied the charge, but admitted his thannah confession, and said his witnesses would prove how the articles given up, found their way into his chest (the key of which as stated by his father, witness No. 33, used to remain with him). No. 11 said he had nothing further to urge, that his witnesses would prove the enmity with No. 10; that he was of good character and did not commit the dacoity; denied that he confessed in the thannah, but admitted his foujdarry confession. No. 12 denied his thannah confession, which he said was extorted by the police and written down at the dictation of Buddeenath Nundee, and pleaded enmity with the darogah's assistant, Ramnarain Chowdree, regarding a woman. No. 13 denied the charge and urged that his witness would prove that he was of good character.

The wounded woman, Sorosuttee Dashee, died on the 29th Bysack, or nearly a month and a half afterwards, and the civil surgeon, who examined the corpse, deposed to death having been caused by an effusion of blood on the surface of the brain and

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the injury must have been caused by a severe blow on the head with a heavy instrument, such as a *lattee*. That there was a small lacerated wound on the forehead above the right eye, and he considered that the injury to the brain was caused by the same blow which caused the lacerated wound, that she might have survived some days or it might have proved fatal immediately, and it is possible that a person might linger for a month and a half in an insensible state.

As there was no proof against prisoner No. 13, that he committed the crime, except that he was a relative of prisoner No. 10, and as the witnesses examined on his behalf gave him a good character, I acquitted him and directed his release.

The witnesses examined for the other prisoners knew nothing of the points on which they were cited. I therefore convict prisoner No. 10 of dacoity attended with murder, and knowingly possessing property obtained thereby, and Nos. 11 and 12 having in their possession property obtained by the above dacoity, knowing it to be such, and recommend that No. 10 be imprisoned with labor and irons in banishment beyond sea for life, and Nos. 11 and 12 to fourteen years with labor and irons in banishment from the district.

I tried this case under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We concur in the sentence proposed to be passed upon the prisoners Nos. 10 and 11. Although it is proved that the death of the deceased was owing to the blow she received at the hands of the dacoits, there is nothing to shew that the prisoner No. 10 took an active part in the dacoity. The only evidence that he was there at all is his confession before the magistrate, in which he states that he remained outside the house.

The evidence against No. 12 is not sufficient for conviction. Even if he had the *saree* and rupee, which he however denied before the magistrate and sessions judge, there is no evidence that he knew them to be stolen property. There has been great remissness on the part of the sessions judge in inquiring into the facts stated at the police by Bydnath Nundee, Munneeram Singh and Ramdhun Deb. They should have been examined, as well as Tarnee Kishore Acharge; from whom, if Bydnath Nundee's story was true, No. 12 said he had received the *saree*. Although the sessions judge examined Sheikh Baramudee the only witness to the point in the calendar, his deposition was so contradictory of previous statements of the parties above named, that further inquiry should have been made into the facts of whether No. 12 had sold the *saree* and rupee to Bydnath Nundee. We acquit No. 12, and direct his release.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND NUDDEA CHAND SOOKOOL,

versus

SUMBHOORAM DOSS (No. 2,) MUDHOO PATTER, (No. 3,) MOOCHEERAM MUNDLE (No. 4,) MUDHOO DOSS (No. 5,) CHOWDRY BHOOYA (No. 6,) NUJEEB KHAN (No. 7,) BOODHOODEEN (No. 8,) NUNDOO DOSS (No. 9,) SHEIKH ZUMEER (No. 10,) NAMDAR KHAN (No. 11,) BEESOO DEY (No. 12,) MUDHOO DOSS ORIAH (No. 14,) BASHEEROODEEN (No. 15,) AND UNUND DHOBA (No. 18.)

Midnapore.

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Case of SUMBHOORAM Doss and others.

Conviction and sentence passed by the sessions judge in a case of dacoity attended with torture, upheld in appeal.

CRIME CHARGED.—1st count, dacoity attended with torture, or in having committed a dacoity in the house of the prosecutor, Nuddea Chand Sookool, beaten and tortured (with torches) witness No. 73, and plundered property to the value of Rs. 381-13-0; 2nd count, Nos. 2 to 12 and 18, having in their possession plundered property acquired in the above dacoity, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Dacoity with torture and plundering, on prisoners Nos. 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14 and 15, and on prisoners Nos. 9 and 18, accessary after the fact.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 5th August, 1854.

Remarks by the sessions judge.—On the night of the 28th April, the house of the prosecutor was broken into by a gang of dacoits, who, after torturing and ill using the inmates, carried off property to the value of Rs. 381-13-0. The prisoners pleaded *not guilty.* The witnesses No. 1, Mudhoo Goochat, and No. 73, Srimuttee Brijomohunnee, depose to the fact of the robbery, and the circumstances attending it, and the former swears to the identity of the prisoner No. 2, Sumbhooram Doss, as one of the dacoits concerned, whose arrest and subsequent confession had led to the discovery and apprehension of the rest of the gang. The prisoners Nos. 2 to 18, confessed in the mofussil, all with the exception of No. 9, Nundoo Doss, and No. 18, Unund Dhoba to having been actually concerned in the robbery, and Nos. 9 and 18 to having had part of the stolen property in their possession. No. 2, Sumbhooram Doss, No. 3, Mudhoo Patter, No. 5, Mudhoo Doss, No. 6, Chowdhry Bhooya, No. 7, Nujeeb Khan, No. 8, Boodhoodeen, No. 14, Mudhoo Doss Oriah, No. 15, Basheeroodeen, and No. 18, Unund Dhoba, repeated their con-

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fessions before the deputy magistrate. In their defence in this court, they plead that their confessions were extorted by intimidation and ill usage, and cite witnesses to character. The confessions carry with them every appearance of truth and are supported by the *sooruthal*, and in the instances of Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 18, are corroborated by the discovery of property, which had been or was actually in their possession. The prisoners, No. 2, Sumbhooram Doss and Moocheeram Mundle, are notorious offenders, have been frequently before the court, and in more than one instance have been convicted and sentenced on charges of theft and dacoity. The prisoner No. 9, Nundoo Doss, is a chowkeedar, and is declared in some of the confessions to have been the instigator, and in others as actively concerned in the robbery, this may, or may not, be the fact, but there is abundant proof that he was an accessary after the fact in the first instance, in withholding from the police the information where the stolen property was concealed, and subsequently pointing it out. The evidence against the prisoners, Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15, is I think clear and conclusive, and they are accordingly sentenced as indicated in the statement, the police deserve credit for having prosecuted their inquiry to so successful an issue. The prisoners are unquestionably part of one of the gangs that infest the district under their separate leaders of whom the prisoner, Sumbhooram, is one of the most enterprising and notorious.

Sentence passed by the lower court.—Nos. 2 and 4, fourteen (14) years' imprisonment each with labor and irons in banishment. Nos. 3, 5, 6, 7, 8, 10, 11, 12, 14 and 15 to nine (9) years' imprisonment each, with labor and irons. No. 9 to (7) seven years' imprisonment with labor and irons, and No. 18 to (5) five years' imprisonment with labor and irons, and all to pay a fine under Act XVI. of 1850, of Rs. 341-7-0, jointly and severally.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The genuineness of the confessions, made by all the prisoners in the mofussil, has been established by the voluntary production of property to the police, or by the admission and repetition of their confessions in the presence of the magistrate. We see no reason to interfere with the conviction and reject this appeal.

PRESENT:
J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

DHUNOO BEWA.

versus

GOBRAH.

Assam.

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October 16.

Case of GOBRAH.

Prisoner convicted of the wilful murder of a child without any assignable reason, and, there being no cause to doubt his sanity, sentenced capitally.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Mr. W. Agnew, magistrate of Gowalparah.

Tried before Major John Butler, officiating deputy commissioner of Assam, on the 14th September, 1854.

Remarks by the officiating deputy commissioner.—The prosecutrix, Dhunoo Bewa, states as follows.

In the present month of Srabon, on a Friday, I do not know the date, about one *pahur* of the day, (afterwards stated about one *pahur* remaining of the day) my orphan grand-daughter, Musst. Dupuhoree, aged about three years, was murdered by my son-in-law, Gobrah Jhalo, fisherman, with the *dao* produced in court, while she was sleeping, by one blow on the neck. I know no cause for the prisoner having murdered the little girl, she was the child of his sister-in-law. The prisoner lived with me in the same house. I left the child. Dupuhoree, sleeping on a mat, near the door at the east end of my house, in charge of the prisoner, and went about one arrow's flight distant to the Monass Nuddee, to get some water, and in my absence the accident or deed was committed. No body saw the prisoner give the blow and the little child made no noise and no one heard any; about one *dund* after, I returned to my house and saw the prisoner standing and trembling all over; on seeing me he said he had murdered Dupuhoree, on which I entered the house and saw that what he had told me was true; the child was lying on her left side, the same as I had left her, her neck was cut from the right side with a *dao*, and she was dead. After seeing which, I commenced to cry aloud, on which my neighbours, Fukera, Petrah, Butassoo, Huree, Gobind, Bhyrobie and others, collected in my house, and the prisoner confessed to them that he had murdered the child, Dupuhoree, with a *dao*, and they, after seeing the body of the deceased, apprehended the prisoner, and the *dao* was taken out by one of the party covered with blood from under a *mechan* in the house, on the prisoner telling them where it was, I do not now recollect the name of the person who took out the *dao*. The prisoner had no enmity to the deceased, she was quite a child and what cause could there be for his having any? The deceased was an orphan and was brought up by me, and I know no cause for the prisoner murdering her. The prisoner never

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showed any madness in his behaviour and was a steady man. The prisoner has been suffering since Maugh last, from a pain in his waist and stomach, but he has always retained his senses; he never smoked *ganjah*, or *bang;* he was always thought an intelligent man; he used a long time ago to smoke *ganjah*, but since his sickness he had left off doing so; on the day of the murder he had not taken any thing intoxicating, and seeing him well, and in his senses as usual, I left the child in his charge. On coming from the *ghat*, I found him in a bewildered state of mind, and trembling. The *dao* produced belongs to the prisoner; I know it, as I live with him; I am acquainted with the prisoner for a very long time, he married my daughter before the *maims** invaded the country, I know him from that time, he is intelligent and of good disposition; there was no one else beside the prisoner in the house; on returning from the *ghat* I saw no *dao* or any other weapon in his hand.

* Burmese.

Question by jury.--When you went to the river-*ghat* where did you leave the prisoner and where was the *dao?*

Answer.—I left the prisoner standing in front of the door of the house in which the murder was committed; there was no *dao* in his hand then. The *dao* was in the house of the prisoner, which is facing the north, but in what particular part of it I do not know. The one mentioned is the one prisoner lives in, it is on that account that I say the *dao* was in it. The prisoner has neither wife nor children.

Questions by magistrate.—Does the prisoner ever get out of his senses on account of the disease he is labouring under?

Answer.—No, for when his sickness has been very bad and his neighbours inquired of him how he got on, he generally answered in a mild manner, and before the murder he was not known to have had any quarrel with any one.

Question.—Had the prisoner any regard for the deceased child?

Answer.—He did not appear either to love or dislike the child, but he had no ill-will towards it.

Confession of the prisoner, Gobrah, before the jury.—I killed the girl, Dupuhoree, with one blow in the neck with the *dao* produced in court.

Fuqueer Chand, 1st witness for prosecution.—In the past month of Srabon, date unknown, about one or one-half *pahurs* remaining of the day, I heard the prosecutrix crying and making a noise, on which I and Petrah of the same village, her neighbours, went to her house; she told us that her grand-daughter by name, Dupuhoree, aged about four years, while asleep was murdered by the prisoner, Gobrah, who cut her throat with one blow of the *dao*, produced in court, on hearing which and seeing the prisoner standing at the entrance of the house, we questioned him about the circumstance mentioned, and he voluntarily con-

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fessed that in consequence of his laboring under a disease for seven or eight months, from which he could get no relief, neither could he die, he therefore with the *dao* gave the girl, Dupuhoree, a blow on the neck and killed her, knowing that by so doing, he would be hanged by the Sahib (alias magistrate.) I know thus much.

When the prisoner murdered the girl, I was not present and I heard nothing more from either the prosecutrix or the prisoner, or any one else as to the cause of the murder. The deceased girl is the child of the prisoner's wife's sister, she has no parents, both being dead, and she lived with her grand-mother, the prosecutrix, and was supported by her and the prisoner. The prisoner loved the girl and there was no ill-feeling between him and the prosecutrix or her grand-daughter, and why the murder was committed is beyond my comprehension. The *dao* produced belongs to the prisoner, he used to take it about with him and I recognize it as the one he used. All the particulars of the murder, I heard from the prosecutrix and the prisoner, and I went and examined the corpse, in the centre of the house with a door at the east, on a mat the body of the girl was seen by me, lying on her left side, with her neck cut through more than half, from which wound she died, there was no other wound about the body.

The deceased girl, I know was not ill.

One Bistnoo Thakoor desired me to search for the *dao*, with which the murder was committed, it was found under a *mechan* by Balook and Butassoo, the *dao* was covered with blood. The *dao* produced is the one in question. After this, we apprehended the prisoner and took him to the thannah.

The prisoner was born near to my house, from that time to this he has remained there in the same village, and I have never known him to be out of his mind or mad; he used to smoke *ganjah* before and talk a great deal of nonsense; on this account some few people used to call him mad Gobrah, but in truth he is not mad. For the last eight months or so, he has been suffering from a severe pain in his abdomen and thighs, and has left off smoking *ganjah* entirely, and since this sickness of his, his mind appears to have suffered somewhat, this we judge of from his conversation, and the manner in which he remains quiet at home, and after the murder he appeared the same, but not mad or intoxicated, his eyes were however quite red and blood-shot. The prisoner on his disease becoming violent used never to get out of his senses, but he used to cry out from pain,—I know this from living near to him and from mutual visits. He used never to get into a passion or excited from the disease he was laboring under, and there was no cause that he should become so.

I saw the prisoner standing in front of his house with his eyes red, and trembling all over, I forgot in my deposition before the

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magistrate to mention what I had heard from the prisoner as being the cause for murdering the girl, Dupuhoree, what I have now stated is true, I forgot to state before the magistrate that his mind seemed to be affected; this is true.

I have seen the brothers and relations of the prisoner, but they none of them were mad, except that his mother was subject to fits.

Petrah, 2nd witness for prosecution.—In the month of Srawan, I do not recollect the date, about one *pahur* of the day remaining, hearing the prosecutrix crying and making a noise, I went to her, when she said that Gobrah had killed Dupuhoree with a *dao*, Gobrah was then standing in the *aungna*, court-yard of the house, I questioned him on the subject, and he voluntarily confessed that he had committed the murder and the Sáhib will hang me for it, and he assigned no cause for the perpetration of the deed; the prosecutrix could not account for his committing the murder. I saw the corpse of the deceased, Dupuhoree, in the arms of the prosecutrix in her house; the neck on the right side was nearly severed from the body by apparently a wound of a *dao*, and there was no other wound on the body and she died from that wound, the age of the deceased was about three years, she was not sickly, she is the daughter of prisoner's wife's sister, being an orphan, she lived with the prosecutrix, her grandmother, in the prisoner's house. The prisoner had no little affection for the deceased, it is beyond comprehension why he murdered her, the prisoner did not tell me with what weapon he had committed the murder, and I did not ask him. Before I arrived, the near neighbors, who had come, he told them that he had committed the murder with a *dao*, and that he had placed the *dao* under the *mechan* in his house, and the *dao* covered with blood was produced, I was not near them, but afterwards went and saw it, this *dao* in court is the identified one, but who it belongs to I know not. After this, we apprehended the prisoner and lodged him in the thannah. Dupuhoree, the deceased girl, was not sickly, neither was there any ill-will between the deceased or the prosecutrix or the prisoner. I know the prisoner from my youth up and reside in the same village, I never saw the prisoner mad, or in a bad state of mind, he took *ganjah* and for six or seven months, the prisoner had a complaint in the thighs and abdomen, which became worse if he took *ganjah*, and on that account, he had wholly given it up. I know not that he took *ganjah* on the day of the murder, I saw the prisoner after the murder and he did not look like one who had taken any intoxicating drug, he was quite collected; when he was well, he was sprightly and passed his time in trade, and from the time of his sickness his intellect was impaired, that is, he sat in his house and merely said, what has happened? where shall I go in a sick state? thus he prated. The *dao* was not pro-

duced before me at first, having afterwards gone there what I heard from others I related. After the murder, the prisoner appeared terrified and his eyes were red and his body trembled. I did not constantly see the prisoner in his sickness. The prisoner always staid at home, sometimes I saw him. I never saw the prisoner insensible in his sickness, neither have I heard that he was, merely in his sickness, he cried out with pain, what has happened? where shall I go? he shewed no great anger.

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I have not seen prisoner's father and mother, they died before I was born, but he had a brother Hera, who died, and his sister is still alive, and I know that his relatives were none of them mad.

Battasoo, 3rd witness for prosecution.—In the month of Srabon, I do not recollect the date, about one *pahur* of the day remaining, hearing the prosecutrix crying and making a noise in her house, I went there, when the prisoner voluntarily, and at his own desire, told me that with one blow of a *dao* on the neck of the girl, Dupuhoree by name aged four years, while she was sleeping, he killed her, and he told me that the *dao* in question was under a *mechan* in the house, in which the murder was committed, and on searching for which, I found the *dao*, now produced, covered with blood, that *dao* belongs to the prisoner, I recognised it, as I have always seen it; when the prisoner confessed the crime he had committed, he also told me that the disease, from which he was suffering, had not left him, and now that I have murdered Dupuhoree, take and make me over to the Sahib, whatever is to happen to me let him do; after this, the people of the village apprehended the prisoner, and took him to the thannah. There was no ill-feeling between the prisoner and the deceased or the prosecutrix; Dupuhoree is an orphan, in consequence the prosecutrix, who is her grandmother, with the prisoner in his house, supported the deceased. The prisoner had a regard for the girl, Dupuhoree, and it is surprising that this crime was committed by the prisoner. On asking the prosecutrix, she could assign no reason why the murder was committed; the wound on Dupuhoree's neck, which was inflicted by a *dao*, I went and examined; her neck was cut on the right side more than half, and she must have died instantly, there was no other wound about her body and the deceased, Dupuhoree, was not in any way ill.

In the centre of the house with a door on the east, I saw the body of the deceased lying with her head to the east on her left side, in the manner she was sleeping, and wounded in the manner stated. I know the prisoner from his birth, as we live in the same village, the prisoner is not mad, neither is he unsound in mind, he used in his senses to live by trading, he was addicted before to *ganjah*, but for the past six or seven months, the prisoner has had a disease and he has entirely left off smoking

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ganjah, and on questioning the prisoner, I heard from him that on account of his disease his body is weak, and by taking *ganjah* he becomes unsound in mind, and therefore he left it off. I do not know whether he had taken any *ganjah* on the day of the murder. After the murder, when I saw the prisoner, he did not appear to me to be out of his mind, or intoxicated, from fear he was trembling, I know the prisoner to be in the habit of speaking to himself, without any object in so doing, since he has been afflicted with the disease he is laboring under, but he used not to get out of temper much, and frequently said he did not know what would happen or where he would go, and used to cry.

Question.— In your deposition before the magistrate, you say that there was no cause for the murder, and that you heard nothing either from the prosecutrix or prisoner as to the cause of the murder, and you say that because the prisoner did not get well, he murdered the deceased, saying whatever the Sahib may do he will do, what is the cause of this?

Answer.—It was from forgetfulness I did not mention the latter before, what I have now said is true.

Question.—In your deposition before the magistrate, you say that for two or three months the prisoner has been ailing, and now you say six or seven months, what is the cause of this difference?

Answer.—I may have said so from forgetfulness, what I now say is true.

Question by medical officer.—From the time the prisoner had been ailing, did you see him daily?

Answer.—I saw him almost every other day.

Question.—On account of his disease would the prisoner get out of his senses?

Answer.—No, he never used to get entirely out of his mind, but when his disease used to get very bad, he used to become quite weak.

The prisoner's father and mother died before I was born; one of his brothers, by name Hera, died in my presence, he has a sister, who is still living; both his brother and sister were of sound mind, they were neither of them mad.

Horee, 4th witness for prosecution.—In this month, I do not recollect the date, about one *pahur* remaining of the day, hearing the prosecutrix making a noise I went to her house and heard from her, that her grand-daughter about four years of age by name Dupuhoree was murdered by the prisoner, Gobrah Jallo, by cutting her neck with a *dao*, I also saw the prisoner there and on asking him, he voluntarily confessed that he had murdered the girl, Dupuhoree, but why he had done so I cannot say; the deceased Dupuhoree, has no parents or relation, the prosecutrix being her grandmother, she used to live with her

and was supported by her, but whether the prisoner had any affection for the girl or not, I cannot say, there was no ill-feeling between the prisoner and the deceased or the prosecutrix and why he killed the deceased I do not know. I do not know to whom the *dao* produced belongs, and I do not recognize it, I saw the wound on the corpse examined, the neck was cut on the right side with a *dao* from which wound the deceased died instantly, besides this there was no other wound inflicted and the deceased was not ailing.

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The prisoner is my mother's sister's son or cousin, and I have known him for a long time. The prisoner, I have known as always having a good temper, and he did not appear to be out of his mind. About six or seven months ago, the prisoner was afflicted with a disease, since which time he did not go out of his house, and never went anywhere; he used to remain at home all day speaking to himself on account of his disease, which affected his mind. We live in the same place, therefore I know this. The village people used to call the prisoner Gobrah *págul*, or mad Gobrah, the prisoner used to get out of temper before and smoke *ganjah*, and the people used in joke to call him mad Gobrah, in reality he is not mad. I did not see the prisoner commit the murder, after it was committed I saw the prisoner, he did not then appear intoxicated, but from fear was trembling, when the prisoner fell sick, he entirely left off smoking *ganjah*. At the time of the murder, I do not know whether he had smoked any or not.

By mistake I mentioned in my deposition in the foujdary before the magistrate that the prisoner was ill for about one year. What I have now stated of his being sick for six or seven months is correct.

Medical officer's question.—Does the prisoner lose his senses on account of his sickness?

Answer.—No, he never loses his senses, but whenever his disease becomes worse, he then talks nonsense.

After the prisoner fell sick, I used to see him after every one or two days, but not every day.

The parents of the prisoner died when I was a child, and I know nothing of them, he has a sister living, she is a good sort of a person and is not mad, he had also a brother who was not mad, he died in my presence.

Bishtodeb, 5th witness for prosecution.—I know the prisoner ever since he was five or six years of age, and I always lived in the same village with the prisoner. The prisoner was never known to be mad or out of his mind, he used to live by trading; about six or seven months ago he became ill of a disease, from that time even he did not appear to be mad, or out of his senses, and in his habits he did not appear to be singular, but on account of his disease he was unable to go about, he used always

1854. to stop at home. The prisoner used to take *ganjah*, but since his illness he entirely left off taking it, I used generally to see

October 16. the prisoner after every ten or fifteen days, on going to his

Case of GOBRAH. house, he used always to complain to me, saying "what disease have I been afflicted with, it were better if God took me away, for I cannot bear such pain any more," besides this, I never saw the prisoner shew any signs of having lost his senses.

The prisoner never got out of his senses on account of his disease, I never saw him even once out of his mind.

I do not know whether owing to his sickness he became violent in temper.

I have known the parents of the prisoner, the father of the prisoner used to be called mad Caoolah, but why they used to call him so, I do not know, he was not in reality mad. The prisoner had no brother, he has a sister living who is sound in mind.

Khonaram, 6th witness for prosecution.—I know the prisoner, Gobrah, for fifteen or sixteen years, we have lived in the same place, the prisoner is neither mad, nor out of his mind, he lived by trading, for six or seven months he has been afflicted with a disease which has made him very weak, and cannot go from place to place, he remains always in his own house.

After his being attacked with the disease, I saw him twice, and he appeared to me to have his intellect impaired in a great degree to what he was before, and his body had become very thin, and he spoke unintelligibly.

I never saw the parents of the prisoner, he had a brother who is dead, he has a sister living, who is in sound mind and not mad.

The prisoner never gets senseless on account of his disease, whenever I saw him, I saw him in his senses.

Horanund, 7th witness for prosecution.—I know the prisoner, Gobrah, from childhood, we have lived in the same place, and I know him, he is not mad, nor is his intellect affected, he lived by trading, about six or seven months since he became ill, and has always remained at home, never going out. In talking with him, I do not know whether his intellect was less than what it was before, and he does not appear to have lost any of his senses.

Since the prisoner's sickness, I have seen the prisoner every five or six days, and I do not know whether he has ever lost his senses from his sickness. I never saw the parents of the prisoner, I saw the prisoner's brother and sister, they were not mad.

Kunteram, 8th witness for prosecution.—I know the prisoner, Gobrah, we both live in the same place, and from his childhood I have seen him, the prisoner is not mad, nor has he lost his intellectual faculties, he lived by trading; about six months ago,

he became ill of a disease and had left off going about from place to place, and I do not know whether on account of his illness he has lost his senses in any way, and how can I say so, he used to cry out *bapra, mara,* what is the matter, where shall I go, and in such manner he used to remain. 1854. October 16. Case of GOBRAH.

I never knew the prisoner to have lost his senses, but his intellect appeared to be affected, since his illness I have seen him sometimes every day, and at other times after every two or four days, he never appeared violent in temper.

I have seen the parents of the prisoner, they were not mad, but his mother was subject to fits, she is dead. The prisoner has a sister living, who is a good kind of a person and is not mad.

Meelun Bagoo and Khoorshed.—Witnesses to confessions before the magistrate, and in the thannah.

Confession of prisoner at the thannah.—I have murdered Dupuhoree, the grand-daughter of Dhunoo Bewah of Puchania.

I murdered her with my *dao* now before me, by giving her a stroke on the right side of her neck.

Yesterday in the evening, the prosecutrix, Dhunoo Bewah, while the girl, Dupuhoree, was asleep went to the river *ghat* to fetch some water, and on going she told me, that Dupuhoree had gone to sleep in the house in the east room and desired me to look after her, and that she was going to fetch water, saying this, after she had gone out of the house, it entered my mind to murder the girl, I therefore with the *dao*, now before me, while Dupuhoree was asleep gave her a blow on the right side of her neck and killed her. The prisoner afterwards stated, that with a view to kill her at once, he gave her the blow inflicted.

The *dao* produced is known to be mine by Butassoo, Bhyrobie and Gobind of the same village as myself.

I was never taken up for any crime before.

I have no witnesses or plea to make in defence.

There was no one saw me kill the girl, Dupuhoree, and there was no one there.

Confessions of the prisoner Gobrah before the assistant magistrate.—Dhunoo Bewah having stated that you have murdered her grand-daughter, Dupuhoree, with a *dao*, what have you to say in reply.

Yes, yesterday about one *pahur* remaining of the day, I murdered the deceased girl, Dupuhoree, by inflicting a blow with the *dao*, now before me, on her neck, while she was asleep.

I confess doing so voluntarily and have no plea to make. The prosecutrix, Dhunoo Bewah, is my mother-in-law, and the murdered girl is the daughter of my wife's sister; since the death of the girl's mother, my mother-in-law had supported her, she consequently was in her house, my mother-in-law, while the girl was asleep, left her in my charge, and went out either to some

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of her neighbours or elsewhere, and without any cause whatever it entered my mind to kill her, and I did so.

Confession of prisoner before the jury.—I have no plea to offer or witnesses to adduce in defence, it entered my mind like a fool to murder the girl, Dupuhoree, and I did so.

Opinion of jury.—Although it appears from the papers of the case that the crime was committed by the prisoner, while suffering from disease, yet in such a case, the crime cannot be designated homicide, because from the confession of the prisoner and evidence of witnesses, the crime charged is fully proved, we are therefore of opinion that the prisoner is guilty of wilful murder.

Opinion of officiating deputy commissioner of Assam.—In the afternoon of the 21st July, the prosecutrix, Dhunoo widow, left her grand-daughter, Dupuhoree, about three years of age, asleep in her house, under the charge of her son-in-law, the prisoner, Gobrah, and went to fetch water from the Monass river, a short distance from the house; on returning home in about a *dund* or twenty-four minutes, she saw the prisoner, when he told her that he had murdered her grand-daughter and he appeared terrified or trembling at what he had done. On seeing the child's throat cut, she cried and made a noise, and her near neghbours came to her, and the prisoner confessed at once that he had cut the child's throat with a *dao*. There were no eye-witnesses to the deed, the *dao* with which the murder was committed was discovered under a *mechan* or bench in the house, covered with blood, and the prisoner was conveyed to the thannah.

At the thannah and before the assistant magistrate and jury, the prisoner has fully confessed his guilt, but he has assigned no reason in his confession for having committed the murder. No. 1, witness Fuqueer Chand, states in his evidence that on hearing of the murder, he, with others, went to the prosecutrix's house and questioned the prisoner, who voluntarily confessed that he had been suffering from a complaint for seven or eight months and could get no relief, neither could he die, he therefore committed the murder, knowing that the magistrate would hang him for it. No. 2, witness Pethra, says the prisoner voluntarily confessed that he committed the murder, and that the Sahib would hang him for it, but he assigned no cause for the deed. No. 3, Buttasoo, who also went to the prisoner's house immediately the murder was committed, saw the bloody *dao*, and the prisoner then told him he was still suffering from his complaint, that he had murdered the child Dupuhoree, take me therefore and make me over to the Sahib (alias the magistrate) whatever is to happen to me let him do.

The medical officer, Mr. G. Ridsdale, examined the body of the child Dupuhoree, and states he found "an incision two inches in length on the right side of the neck which had divided

the common carotid artery, vertebra and spinal marrow, there were no other injuries visible." **1854.**

The wound was sufficient to cause death, and it might have been committed with the *dao* shewn in court. **October 16.**

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The deceased child had no internal disease, all the organs were perfectly healthy.

The prisoner has been under the care of the medical officer thirteen or fourteen days, he saw him daily and states, "his conduct indicated no signs of mental derangement since he had been under the care of the medical officer; on first visiting him he was somewhat excited and complained of a peculiar sensation in his body, subsequently he has been very quiet, and shewn no indications of insanity, he (the prisoner) appears to be in good health, I have examined him minutely, and discovered nothing to indicate any disease, I do not think he could have suffered from any disease that would have caused temporary madness and yet left him in the state of health I found him in. I do not think he was absolutely mad, he may have been seized with a sudden impulse of passion and acted under it, and over which he had no control, for although I have not been able to discover that he is laboring under any disease, yet if the witnesses are to be believed he has for the last six months been suffering from illness, and on any occasion of the pain appeared reckless of what might become of him."

Nos. 1, 2 and 3, witnesses, depose to the prisoner's having been afflicted with some complaint, it appears, in the abdomen for six or seven months past, and that before he fell sick, he was addicted to smoking *ganjah*, but since the sickness he had given it up, they knew him well for years past and yet in speaking of his intellect, they consider him a sensible man and have never seen him mad or intoxicated, and though he may have been called by some few people "mad Gobrah," yet he is not mad.

Nos. 4, 5, 6, 7 and 8, witnesses, all depose to the prisoner's sanity excepting intervals of sickness within the last six or seven months, when he would cry out he could not endure the pain, and that it were better if God took him away, and other expressions, *bapra*, *mara*, what is the matter, where shall I go. Before the assistant magistrate, three witnesses depose to his voluntary confession of having committed the murder, and the prisoner has urged nothing in extenuation of his conduct before the jury. The verdict of the jury therefore is, that the prisoner is guilty of wilful murder. The magistrate, however, is of opinion that ill health must have disordered a brain not perhaps originally strong, and that there must be grounds for his having been called "Gobrah, the fool," which shews there must have been something strange about him, although what exactly, we don't know, and that therefore there are reasonable grounds for

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doubting the perfect sanity of the prisoner, although the evidence does not establish his being mad.

In this reasoning, I cannot concur, a cold-blooded barbarous murder has been committed by the prisoner on a poor innocent helpless child of three years of age; whether the murder was committed from superstition to effect his own recovery by appeasing the goddess, Kalee, or, whether the prisoner, who is said to have given up *ganjah* since his illness, committed the deed when under the effects of *ganjah*, as his eyes were blood shot, and he appeared terrified at what he had done, we cannot say, but in either case it is no extenuation of the crime, and after the strong evidence given by the medical officer of the prisoner's perfect sanity after careful enquiry and examination for many days, and which has been fully confirmed by the prosecutrix and eight witnesses who knew the prisoner for years past, I cannot see any extenuating circumstance to render the prisoner deserving of mercy, I therefore recommend that the prisoner be sentenced to suffer death by being hanged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes). We concur entirely in the view taken of this case by the officiating deputy commissioner. No circumstances of extenuation present themselves in connection with the perpetration of the cruel murder, of which the prisoner has been proved guilty. We see no reason whatever to doubt the prisoner's perfect sanity at the time he committed the deed; indeed the evidence of his relations and neighbours is conclusive on this point, shewing only that the prisoner at times suffered great pain from some internal disease. The prisoner has not himself disclosed the motive which induced him to take the life of an innocent and unoffending child, nor can the witnesses speak to that point, but this is immaterial; the facts before us deduced from the evidence, fully establish the prisoner's guilt, and in concurrence with the officiating deputy commissioner, we sentence him to suffer death.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

GUNGARAM LOHAR.

West Burdwan.

1854.

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Case of GUNGARAM LOHAR.

Prisoner convicted of perjury, in having stated that he was not servant to a certain person, and that he had never given evidence on the part of that person, acquitted in appeal.

CRIME CHARGED.—Perjury in having in the case No. 2, under Regulation V. of 1812, of Ramchand Surma plaintiff, on the 7th July, 1854, or 24th Assar 1261, B. S., deposed under a solemn declaration, taken instead of an oath before the assistant deputy collector of Bancoorah that "I am not servant of Rammohun, and never gave evidence on the part of Rammohun," such deposition being false, and having been intentionally and deliberately made, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. Tucker, deputy collector of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of west Burdwan, on the 12th August, 1854.

Remarks by the sessions judge.—One Ramchand Surma, calling himself tenant of a portion of the Dewutter lands of one Rammohun Chand, who is the Serishtadar of the P. S. Ameen, brought a criminal action against Roopchand Ghose and others (inclusive of Heraloll Surma, Oodye Chand Surma and Bankoo Surma, witnesses Nos. 2, 4 and 5, in this case), for plundering crops said to have been sown by him on his *jummaee* lands. In the course of the investigation, the joint-magistrate found, from the statements of the defendants, &c. that the case was one of distraint, made by Roopchand Ghose, on the crops of his alleged ryuts, Gunesh Chunder Biswas and others, and thereupon, dismissed the case under construction No. 615.

Ramchand Surma then resorted to a suit for damages, in the deputy collector's court, in which the prisoner Gungaram Lohar, was examined, as a witness on his part. The points involved in his alleged perjured statements, cited in the charge were so far material to the issue of the case, that the facts of his being a servant of Rammohun Chand and having deposed on his part before would, if at once acknowledged, have militated against the credibility of his evidence. The prisoner pleaded not guilty, denying that he had made the statements imputed to him.

His deposition in Ramchand Surma's case, which was given before the assistant, with full powers of deputy collector was by some oversight, left unsigned by the prisoner, but the witnesses, Nacouree Chaprasee and Sreeram Singh, Mohurrir, Nos. 6 and

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7, fully proved it, as well as the fact of its having been made on solemn declaration. The witnesses from 1 to 5, deposed to their knowledge of the prisoner being a servant of Rammohun Chand, and to his having collected rent and kept cows, &c. for that individual, but none of them could say that they had actually seen him receive salary for his services. The depositions formerly given by him in the Regulation VII. cases, Nos. 649 and 613 of 1852, were fully and distinctly proven by the evidence of the deputy collector's mohurrir, Gunga Hurree Chatterjea, who wrote them, and Samachurn Chowdry, who instituted the said cases on the part of Rammohun Chand, as his *karperdaz*. These depositions bore the signature of the prisoner, and the said witnesses proved that he had made declaration, instead of oath.

The prisoner's defence was, that he was not a servant of Rammohun Chand, and with regard to the rest of the charge, that he was old and foolish, and did not know what he had said.

His witnesses deposed that he was not a servant of Rammohun Chand.

The law officer considered the perjury, in the first statement cited in the charge, not proven, but convicted him of *buzunighalib*, or on violent presumption of perjury in the second, and declared him liable to *tazeer*.

My opinion was coincident, except that I considered the proof of perjury in the second statement, full and legal, and, as I saw no extenuating circumstances and severe punishment for perjury is required here, I convicted the prisoner and sentenced him as noted.

I did not consider the absence of the prisoner's signature, in his deposition, upon which the charge was based, of any great consequence, as the evidence of his having given it was full and trustworthy, besides which the several sheets thereof bore the *mokabilah* of the mokhtar of Ramchand Surma's antagonists.

Sentence passed by the lower court.—To three (3) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner was charged with wilful and deliberate perjury on a point material to the issue in having stated as follows: "I am not a servant of Rammohun, and have not given evidence on the part of Rammohun."

The sessions judge, in concurrence with the *futwa* of the law officer, finds that the prisoner spoke no untruth in stating himself not to be a servant of Rammohun, but in accordance with the *futwa*, convicts him of swearing falsely that he never gave evidence on the part of Rammohun.

We observe that the prisoner was examined before the assistant deputy collector on the 7th July, 1854, and there deposed that he is not a servant of Rammohun, and never gave evidence on the part of Rammohun.

The questions eliciting these answers are not on record, but it is fairly presumable that they were to the same general purport as the answers, and that the particular instances in which the prisoner had previously given evidence on the part of Rammohun were not specifically alluded to, nor any *direct* and *unequivocal* reply in reference thereto required from him. Such being the case, we are of opinion that the offence of wilful and deliberate perjury is not made out against the prisoner. The instances, in which he was known or supposed to have given evidence on the part of Rammohun, not being of very recent date should have been brought to his notice and the necessary question directly put, concealment of the fact by a false answer would then have fairly laid him open to the charge of wilful and deliberate perjury;—as it was, the prisoner when made aware of his former depositions, at once admitted them, and excused himself on the plea of forgetfulness. We acquit the prisoner of the charge, and direct his release.

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Case of GUNGARAM LOHAR.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT AND MOTEEOOLLAH,

versus

MUSST. SHEETAH.

Backergunge.

1854.

October 16.

Case of MUSSUMMUT SHEETAH.

Although the prisoner was convicted of murdering her husband, she was, with reference to her youth, and the treatment she had received from him, sentenced only to fourteen years' imprisonment with labor.

CRIME CHARGED.—Wilful murder of Shookoor Mahomed.

Committing Officer.—Mr. C. Jenkins, assistant magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 7th September, 1854.

Remarks by the sessions judge.—The deceased was asleep inside his own house, when his wife took that opportunity at about 3 o'clock in the evening, to assault him with a long handled *dao*, and the wounds she inflicted on his head were so serious that he expired within a very short time.

The father* of the deceased, who slept in the *verandah* of the same house, was awoke up by hearing his son's groans and he saw the prisoner at the same time make her exit from the door.

A neighbour† saw the prisoner quit the house, under circumstances which leave no doubt that she committed the deed.

Other neighbours,‡ arrived and before them the prisoner confessed the crime; they saw the wounds, four in number, and one of the two on the head penetrated through and through the skull into the brain.

* Moteeoollah.

† Witness No. 1, Buderoodin.

‡ Witness No. 11, Amamedin
" " 12, Doollub Chowkeedar.
" " 13, Iktear Khan.
" 14, Roopdhun Chowkeedar.
" 15, Saduck.

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Case of MUSSUMMUT SHEETAH.

The prisoner confessed her guilt at every stage and pleads guilty before me. Her defence is, that she was greatly ill-used by her husband, that she had a promise of marriage by one Borandee, who vowed if they were ever united that he would treat her with every kindness, and that influenced partly by revenge and partly from a desire to better herself, she committed the fatal deed.

The law officer finds her guilty of wilful murder, but declares *kissas* barred owing to her tender age.

Her guilt is both clear and great, the murder was done in cold blood and has nothing to palliate it. The only consideration is as to the punishment suitable, where the criminal is one so young in years as the prisoner is. She calls herself ten years old, but I should say that she is not less than twelve. Her appearance is not that of a child, and in intellect her deportment, and the way she answered the questions put to her, show her to be not inferior in understanding to the generality of grown up women in this country,—while the skill, the manner, and resolution exhibited by her in the commission of the fatal deed, could not have been surpassed. It is however right to say that those who are capable of speaking on the subject, allow that the monthly indications of attained womanhood have not yet appeared.

All admit that her husband was not kind to her, that he used to chastise her for domestic duties left undone, or done improperly, without duly considering that errors of the unfortunate offender were the faults of inexperience. There is not wanting evidence to show that on the fatal day, the poor girl received some chastisement from her husband. The intolerable burthen of this oft-repeated and unmerited ill-treatment, the hopelessness of ever getting quit of it, added to the inducement afforded by the promise of Borandee that he would marry her, if any thing happened to her husband, with perhaps a direct counsel that it was easily in her power to secure this result, betrayed her, it may be presumed, into the commission of the crime. These motives, which would not suffice in most cases, may, I think, be allowed their weight, acting on a mind so young as that of the prisoner. Agreeing then with the law officer in the propriety of not awarding a capital sentence, I would recommend that the prisoner be sentenced to imprisonment for life.

I would observe that the body was not sent in for examination by the medical officer as the cause of death was undoubted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.)

Mr. A. Dick.—In estimating the value of a confession in this country, and judging of its truth, it is absolutely necessary to separate what portion is corroborated by facts otherwise divulged, or proved, from what is wholly unsupported by any

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evidence. Such a test must be applied to the confessions of the prisoner.

There is not a particle of evidence of any kind to shew, or even cause suspicion, that an adulterous intercourse ever was carried on between the prisoner and either Gopal or Borandee. Neither the father of the deceased, nor any of the neighbours ever suspected it, or heard of it. The ill-treatment, however, of the prisoner by the deceased and his constant tyranny, were notorious. There can therefore remain little doubt, that the desperate conduct of the prisoner was caused by the helpless state of misery to which the murdered husband had reduced the wife, his murderess. The prisoner though older in appearance than really in years, had not, according to the best evidence on record, attained womanhood: and her mind was manifestly in a very immature state; for she has stated as facts, things contradictory in themselves and utterly unsupported by any evidence. But she has throughout declared, she intended to kill her husband for his cruelty to her. She must therefore be convicted of murder. In consideration however of her youth, and the distressing and irritating nature of the aggravation, which induced her to commit the dreadful deed, I would sentence her to fourteen years' imprisonment with labor suited to her sex.

I would observe that the guilt of the prisoner in the *intention* is far more heinous than that of the prisoner Mathur Bewa. See Nizamut Adawlut Reports, 20th July, 1853.

Mr. B. J. Colvin.—I concur in the sentence proposed by Mr. Dick, as it clearly appears from the evidence that the prisoner was subjected to much cruelty and ill-treatment by her husband, and there is no proof of her having had any intrigue with Borandee or Gopal, regarding the last of whom the sessions judge has made no mention in his report. Had such proof existed, the act of the prisoner might have been ascribed to a desire to be rid of her husband for the sake of prosecuting her attachment, in which case her youth could not have been taken into account as extenuating her guilt, but as she was driven by desperation to the commission of the crime, the circumstances of the case with reference to her tender age do not even, adverting to the difference between them and those of the one cited by Mr. Dick as pointed out by him, call for a severer sentence than fourteen years' imprisonment with labor.

N. B. • The sessions judge is referred to the Court's order on the case of Chytunno Christian and another, disposed of on the 11th Oct., directing his attention to paragraph 6, of Circular Order No. 54, dated 16th July, 1830, the instructions of which have been neglected in this case also.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

DWARKANATH ROY.

24-Pergunnahs.

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Case of DWARKANATH ROY.

The prisoner's appeal was rejected as the crime of perjury was clearly proved against him.

CRIME CHARGED.—1st count, perjury, in having, on the 31st May, 1854, deposed on solemn declaration under Act V. 1840, before the magistrate of the 24-pergunnahs, in the case of Goloke Chunder Sircar versus Kishtohurree Mashchuttuck, charged with plunder, that he, the said Dwarkanath Roy, defendant, had seen Kishtohurree Mashchuttuck passing along the road at Bhowanipore on a Sunday, in the early part of the month of last Chyetro (i. e. the 7th Chyetro) at 10 or 10½ o'clock in the morning. And in having again, on the above date, deposed on solemn declaration before the magistrate aforesaid, that he did not see defendant, Kishtohurree Mashchuttuck, on Sunday, the 7th Chyetro aforesaid, at 10 o'clock in the morning at Bhowanipore, but that he saw him at about two hours before sunset on that date. One of these depositions being false and both being contradictory of each other on a point material to the issue of the case; 2nd count, perjury in having on the 31st May, 1854, deposed on solemn declaration, under Act V. of 1840, before the magistrate of the 24-pergunnahs, in the case of Goloke Chunder Sircar versus Kishtohurree Mashchuttuck, charged with plunder, that he, the said Dwarkanath Roy, defendant, had seen Kishtohurree Mashchuttuck passing along the road at Bhowanipore on a Sunday, in the early part of the month of last Chyetro (i. e. the 7th Chyetro) at 10 or 10½ o'clock in the morning, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 19th July, 1854.

Remarks by the officiating additional sessions judge.—This is again a lamentable instance of the small estimation in which the sacred obligations of an oath are held by the natives of lower Bengal. The prisoner was a witness for the defence in a case of riot and plunder and deposed that he saw the person, on whose behalf he was giving evidence, on the Bhowanipore road, about 10 A. M. on a day specified. When brought up for cross-examination by the magistrate, shortly after he had deposed to the

above effect, he repudiated his former statement and asserted that he had not met the defendant at the hour abovementioned, but at about 5 P. M. or towards evening on that day. On being questioned as to the discordance apparent in his testimony, he admitted that he had sworn falsely in the latter instance, and had been induced to do so from the consideration that he would thereby befriend and absolve a Brahmin from punishment. The prisoner was in the employ of Government when he committed this perjury, and his object in it was to procure the release of a guilty man. Such a disregard of the principles of truth, and such a defect in the moral perception are beyond all comment. The collateral evidence, adduced for the prosecution, shows that the party alleged to have been seen by the prisoner on the Bhowanipore road at 10 A. M. on the day of the riot, was present at that time at the scene of the outrage, aiding and abetting, some fourteen or fifteen miles off, and proves the falsehood of the prisoner's first statement. Again I punish severely, as the only means within my reach to abate the crying evil of false-swearing.

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Case of DWARKANATH ROY.

Sentence passed by the lower court.—Sentence to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin). The prisoner is clearly guilty of perjury. He made his first statement, which he contradicted afterwards with the express purpose of screening the accused on a material point. We therefore reject his appeal.

The remarks made in the case of Dookeeram and Bullye, disposed of to-day, relative to the finding of perjury generally, when two counts distinct in their nature were charged, apply to this case also.

PRESENT:
A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,
versus
KHAN MAHOMED.

Rungpoor.

1854.

October 17.

Case of KHAN MAHOMED.

The prisoner's appeal was rejected.

CRIME CHARGED.—1st count, dacoity in the house of Tepree Bebee and Sujjun Bebee, and plunder therefrom of cash and property valued at Rs. 2,634 with wounding of Burkutoollah and assault on Tepree Bebee, Ainoollah and Ghureeboollah; 2nd count, receiving and having in his possession property knowing it to have been obtained by the said dacoity with wounding, &c.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpoor.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpoor, on the 3rd June, 1854.

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Case of KHAN MAHOMED.

Remarks by the officiating sessions judge.—On the night of Monday, the 27th of March, 1854, the household of Musst. Tepree were alarmed by a number of men with their faces discoloured and bound with cloth, bursting into the house beating the witnesses Nos. 1 to 4, who were sleeping there, of whom Nos. 1, 3 and 4 were then tied, but No. 2 escaped and watched the proceedings as far as possible from outside. The dacoits first broke open a chest in the *khanka* house, taking therefrom a quantity of valuable property and then entering the inner houses, seized the eldest child of Tepree and prepared to torture him by burning, if she did not show where the money was kept, she pointed out the spot where a brass pot containing 2,004 rupees was buried which the dacoits dug up and made off with, issuing from the enclosure some by the south, some by the west door. Witness No. 2, watching at the former, saw one dacoit come out some time after the rest and calling for aid rushed after him, witnesses Nos. 5, 6 and 7 who lived close by already alarmed by the noise ran immediately to help him and the dacoit stumbling in a hole a very short distance from the house was seized by the witnesses, with a bundle containing three pieces of cloth belonging to Musst. Tepree, and taken back to the house where he confessed in the presence of his captors and of witnesses Nos. 1, 3 and 4, who by this time had been released from their bonds. It is not very clear how far the other dacoits were ahead when prisoner was captured, but at all events they made no attempt at a rescue. Next morning a silver necklace was found at the spot of capture.

The prisoner confessed both at the thannah and before the magistrate, detailing at length how he had gone with many others named to commit the dacoity, how he was seized, &c. He states that he was imprisoned for one year in a case of affray, but the foujdary record-keeper cannot ascertain the point. He called three witnesses to good character, but declined to have their evidence taken, alleging the witnesses whom he wanted were three others of the same names as those produced, and when requested to describe the site of their residence, he described them as being a coss from some other person's house, whose site he did not know, it was clear that he had no witnesses. I tried this case alone under Act XXIV. of 1843, and considering the charge of dacoity with wounding to be proved against the prisoner I sentenced him as mentioned.

Sentence passed by the lower court.—Seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin). After examining the record, we see no reason for interference with the conviction and sentence, and the prisoner has, in his petition of appeal, shewn no grounds for impugning them. We therefore reject his appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT,

versus

CHYTTUR DHOOPEE.

Backergunge.

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Case of CHYTTUR DHOOPEE.

Prisoner convicted of the wilful murder of his brother's widow, sentenced to transportation for life, owing to the absence of premeditation.

CRIME CHARGED.—Wilful murder of Musst. Moheshurry.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of zillah Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 16th September, 1854.

Remarks by the sessions judge.—The first intimation given to the police of this affair was by the prisoner himself. On the night of the occurrence he presented himself at the thannah, in a state of high excitement and with his clothes smeared with blood, and informed the darogah that he had, shortly before, had a quarrel with his deceased brother's widow, and that he had with a *dao*, so injured her that he was unable to say whether she was dead or alive. It being night, and no witnesses present, the darogah did not record this confession on paper, but he started immediately with the prisoner for the scene of the occurrence, and arriving at midnight of the same day, he found the deceased unable to speak and tossing about, very restless. There were several bruises, cuts and wounds on her person. The next day he sent the woman into the station, but she did not reach it alive. The next morning the prisoner made a long and circumstantial confession before the darogah in which he admitted that he seized a *dao*, while in the heat of a quarrel with the deceased, and severely wounded her with it.

The chief witness before the darogah and before the magistrate was the prisoner's mother, but she wept so loud and was so unwilling to say anything, even in favor of her son, if she could do so, that I thought it best to dispense with her evidence.

There was, besides the mother, a neighbour,* who, being attracted to the spot in the beginning of the quarrel arrived just when the last blow with the *dao* was struck, he saw the prisoner make the blow, throw down the *dao* and run off.

* Witness No. 1, Kishore Dhoopee.

Musst. Tarah,† also a near neighbour, saw the prisoner throw down the *dao* and run off, she says in her examination before me, that she also saw a blow struck with it, but as she did not say this in her previous examination, this addition may be set down as borrowed information.

† Witness No 7.

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The medical officer,* deposes that "the body exhibited several marks of violence; there was a large bruise on the left cheek of which the skin was entirely off; she had a punctured wound above the right collar bone, and the collar bone was itself fractured." He attributes death to several combined causes, "he supposes that the shock the constitution received from the fracture of the collar bone and the bruise on the left cheek, added to her advanced pregnant condition (she was six months gone with child) together with confinement on board a boat, without proper treatment, all in their degrees combined to cause death."

* Witness No. 5, Dr. M. Scanlon.

The darogah's *sooruthal*, attested by the witnesses† present at it, describe the injuries as much more serious than those which the medical officer observed. There was a bad wound three inches long on the back of the neck beside the punctured wound made mention of by the medical officer, and the neck was much swollen. As the woman died within thirty-two hours after the mofussil *sooruthal*, and the body was inspected by the doctor within three hours after death, I cannot easily account for the great difference between the two examinations. All the witnesses agree that the deceased never opened her mouth after she received the wounds, and considering the immediate alarming effects of them, there is every reason to think, notwithstanding the Doctor's qualified opinion, that death was the result of the violent assault made on her by the prisoner.

† Witness No. 3, Petumber Doss.
" " 4, Gourkishore Dey.

The prisoner denied the charge, as he did before the magistrate. His plea was an *alibi*, and he accused certain relatives of his own and others with being the authors of Moheshurry's murder, which they laid to his charge in order to screen them-

He denied also having ever made any mofussil confession, and he disavowed being the owner of the bloody clothes with which he was clad, when he first charged himself with the murder.

From the prisoner's confession, which has been proved by the attesting witnesses, his own account of the occurrence and what led to it, is as follows.

There had been an improper intimacy with the deceased, and a relative of the prisoner, by name Hurmohun, who lives in the same homestead. The deceased is the widow of a brother of the prisoner. Hurmohun was in Aghun last discarded by her, for the prisoner and for some time afterwards they lived on the footing of man and wife. They did not however agree, and Hurmohun and some other of the prisoner's relatives in consequence of their disagreement, persuaded the deceased to form an alliance with Kashee Dhoopee. This was strongly objected

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to by the prisoner, and it led to frequent quarrels between him and the deceased, who notwithstanding her attachment for Kashee Dhoopee, continued to live with the prisoner. A quarrel occurred on the eventful day between the prisoner and the deceased, because the latter threatened that if the prisoner left her, as he said he would do, to get service at Cowkalee, she would follow him to the same place with Kashee Dhoopee, and support herself in the profession of a prostitute. At the same time that she said this, Kashee Dhoopee was behind the door, and on a wink given to her by him, the deceased was walking out of the house, when the prisoner laid hold of her and struck her and kicked her, she still continued to abuse him, and the prisoner being unable to restrain his anger, and seeing a *dao* stuck in a bamboo by the side of the door, he seized it and struck her a blow with it on the side of the neck which laid her prostrate.

Three witnesses* were named by the prisoner in his defence, yet it does not appear what they were intended to establish. However, the first two witnesses coming into court, the prisoner said they were not the parties he intended. The third he had examined, but so far from knowing anything in the prisoner's favor, the witness says he has been told by every one that the charge against the prisoner was a true one.

* Witness No. 13, Dhuloo Mea.
14, Kishore Bar.
15, Mataboodin.

Being desirous of giving the prisoner the benefit of any evidence he might wish to call in his favor, I asked him to furnish me with any clue as to who the parties were, whom he named as his witnesses before the magistrate. The parties produced were, I fully believed, the real persons intended by the prisoner but to put it out of his power to raise any future objection on the ground of his witnesses not being called, I directed the magistrate to order the police to send in every one of the same name as that given by the prisoner who might reside in the particular place named. The darogah having reported that there were no other persons but the parties originally sent in residing in the villages named, there is no doubt that the real witnesses were the persons who first appeared, and that the prisoner repudiated them only to postpone the final sentence.

The law officer finds him guilty on violent presumption of the wilful murder, and declares him liable to *kissas*.

I agree in this conviction and considering all the circumstances of the case, and that the blow with the *dao* was struck in the heat of a quarrel and the weapon was at hand, and giving him the benefit of the doubt arising from the medical officer's opinion as to the immediate cause of death, I would recommend that the prisoner be sentenced to imprisonment for life in transportation.

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Case of CHYTTUR DHOOPEE.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We concur with the sessions judge in convicting the prisoner of the crime charged. As it appears, however, that the crime was committed not by premeditation but while the prisoner was excited by the bad temper and conduct of the woman he was struggling with, when in the height of his anger he seized a *dao* which was unluckily within his reach, we consider the extreme penalty of the law need not be inflicted, and in compliance with the recommendation of the sessions judge, sentence the prisoner to imprisonment for life with hard labor in transportation.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

BULLYE DASS (No. 1,) AND DOOKHERAM COWRAH (No. 2.)

24-Pergunnahs.

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Case of BULLYE DASS and another.

To constitute the crime of perjury, there should be manifest on the part of the witness, a deliberate intention to deceive the Court on a point material to the case.

CRIME CHARGED.—Prisoner No. 1, 1st count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding with intent to murder, in which Prosono Coomar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the prosecutor being beaten and wounded by the defendants with two small bamboo *lattees*, as also with an instrument like the one then before the court, and that he saw the assault with his own eyes; and in having again on the day above written deposed on solemn declaration before the magistrate aforesaid, that he did not see the assault committed, one of these depositions being false, and both being contradictory of each other on a point material to the issue of the case; 2nd count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding with intent to murder in which Prosono Coomar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the prosecutor being beaten and wounded by the defendants with two small bamboo *lattees*, as also with an instrument like the one then before the court, and that he saw the assault with his own eyes, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 2; 1st count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding

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with intent to murder in which Prosono Coomar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the defendants commit the wounding with the two bamboo clubs, and an instrument similar to the *gooptee* or sword stick then before the court, and that he saw the assaults with his own eyes, and in having again on the day above written, deposed on solemn declaration as above before the magistrate aforesaid, that he did not see the assault committed, one of these depositions being false, and both being contradictory of each other on a point material to the issue of the case. 2nd count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding with intent to murder, in which Prosono Coomar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the defendant commit the wounding with the two bamboo clubs, and an instrument similar to the *gooptee* or sword stick then before the court, and that he saw the assault with his own eyes, such depositions being false and having been intentionally and deliberately made, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs on the 18th July, 1854.

Remarks by the officiating additional sessions judge.—This is another instance of the deplorable prevalence of the crime of perjury in these provinces. The occasion markedly exhibits the criminal disregard the natives entertain of the obligations and importance of an oath, and discovers in all their nakedness the evils engendered by such a pernicious system on the administration of justice in our courts. The prisoners were witnesses in a case of wounding with intent to kill. They first stated that they witnessed the assault and battery, and saw the accused running away. They then deposed on the same day when cross-examined by the magistrate, that they had not witnessed the assault, and when interrogated as to the discrepancy, admitted then and there with the utmost *insouciance* that they had in the first instance deposed falsely. There is a species of effrontery in all this, and a laxity of moral principle of a highly culpable nature meriting condign punishment. As the charge details the particulars of the perjury, I have not thought it necessary to enter into a fuller account of the circumstances under which it was perpetrated. The proof against the prisoners is conclusive, and by visiting their offence with the utmost rigour of the law, I do all in my power to put down so monstrous an evil.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) Although the prisoners in their cross-examination by the magistrate contradicted themselves, declaring at one time that they saw the accused actually striking the wounded man, and again that they only saw the accused running off, still such contradictions do not appear to have originated in any desire to screen the accused, or deliberately to tell falsehoods. To constitute the crime of perjury and render a witness obnoxious to punishment, there should be manifest on the part of the witness, a deliberate intention to deceive the court on a point material in the case. The evidence of the prisoners to having heard the cries of murder, and on repairing to the spot, seeing the accused running off from the spot where they, on going up, found the wounded man, was fully sufficient to convict the accused of the crime. Therefore, the subsequent denial of the prisoners that they saw the blows actually struck, could not have originated in any desire to screen the accused. We therefore acquit the prisoners of deliberate perjury and order their release.

The sessions judge has omitted to specify on which of the two counts, he convicted the prisoners of perjury. The first count constitutes, perjury by contradiction. The second, perjury by utterance of what is false. The proof of the last must depend on extraneous evidence, establishing the fact of falsehood. The deposition itself proves the first.

PRESENT:

A. DICK, AND B. J. COLVIN, ESQS., *Judges.*

24-Pergunnahs. 1854. October 17. Case of BAHADOOR SHEIKH and RAMDHONE MOOKHOPADIA.

The appeal of the prisoner convicted of perjury was rejected.

GOVERNMENT

versus

BAHADOOR SHEIKH (No. 1, APPELLANT) RAMDHONE MOOKHOPADIA (No. 2.)

CRIME CHARGED.—No. 1, 1st count, perjury in having on the 16th and 19th August, 1853, deposed on solemn declaration, under Act V. of 1840, before the magistrate of the 24-pergunnahs, in the case of Sreenath Bose versus Ram Chatterjia and others, charged with riot and plunder of a cutchery; that Ram Chatterjia and others attacked the cutchery at night, and ordered the riot and plundering; that the said Ram stood about ten or twelve cubits east of the cutchery, and gave orders and that he (prisoner) had always known the persons he had named

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(Ram Chatterjia being one) and in having again on the 9th of March, 1854, before the officiating magistrate of the 24-pergunnahs deposed on solemn declaration under Act V. of 1840, that he was a stranger, and had only been three days at Casba; that he did not know Ram Chatterjia; that he had only seen Ram Chatterjia one day; that he could not tell where any one was at the time of the occurrence; that if he were now to see Ram, he could not recognize him; and that the prisoner Ram Chatterjia (then present) is not the accused party, one or other of such depositions being false, and they being contradictory of each other on a point material to the issue of the case. 2nd count, perjury in having on the 9th March, 1854, deposed on solemn declaration under Act V. of 1840, before the officiating magistrate of 24-pergunnahs, that he was a stranger, and had only been three days at Casba; that he did not know Ram Chatterjia; that he had only seen Ram Chatterjia one day; that he could not tell where any one was at the time of the occurrence; that if he were now to see Ram, he could not recognize him; and that the prisoner Ram Chatterjia (then present) is not the accused party, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. No. 2, 1st count, perjury in having on the 16th and 19th August, 1853 deposed on solemn declaration under Act V. 1840, before the magistrate of 24-pergunnahs in the case of Sreenath Bose versus Ram Chatterjia and others (charged with riot and plunder of a cutchery) that Ram Chatterjia and others ordered the riot and plundering; that the same Ram Chatterjia stood under a mango tree before the cutchery and gave orders; that he had known the persons he had named (Ram Chatterjia being one) for about three or four years; and in having again on the 9th March, 1854, before the officiating magistrate of 24-pergunnahs deposed on solemn declaration under Act V. of 1840, that he had seen Ram Chatterjia once only on the day of the occurrence; that it was long ago, and if he saw him now he could not recognize him; and that he is unable to state whether the defendant Ram (then present), was, or was not, the person he had formerly named. One or other of such depositions being false, and they being contradictory of each other on a point material to the issue of the case. 2nd count, perjury in having, on the 9th March, 1854, deposed on solemn declaration under Act V. of 1840, before the officiating magistrate of 24-pergunnahs, that he had seen Ram Chatterjia once only on the day of the occurrence; that it was long ago, and if he saw him now he could not recognize him; and that he is unable to state whether the defendant Ram (then present) was, or was not, the person he had formerly named. Such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

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Case of BAHADOOR SHEIKH and RAMDHONE MOOKHAPADIA.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, officiating magistrate of the 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 15th July 1854.

Remarks by the officiating additional sessions judge.—The perjury charged is detailed in the indictment and the prisoners plead guilty. The evidence adduced against them proves the statements made by them severally on the 16th and 19th August, 1853, and 9th March 1854, and these two are contradictory of each other, and were intentionally and deliberately given under solemn declaration. In the former they stated that one Ram Chunder Chatterjia (acquitted as per statement, No. 8, of this court for the present month, case No. 5 of July 1854,) was present at an assault and plunder and aided and abetted therein by giving orders, and in the latter that they had no knowledge of the man Ram Chunder Chatterjia, could not identify him if brought before them, and that the person then and there produced (the veritable defendant Ram Chunder) was not the accused party and the individual named by them in their previous examination. The prisoners admitted guilt before the magistrate also, and their confessions are duly proved. The crime of perjury is frightfully on the increase. Hence the severity of the sentence.

Sentence passed by the lower court.—To be imprisoned with hard labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin). The prisoner confesses throughout to having perjured himself at the instigation of others. We reject his appeal.

The same remarks regarding the distinction between the two counts, and the finding of perjury generally, apply in this case, as in the cases of Bullye and another, and of Dwarkanath Sing, disposed of this day.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

NUSSEEB DOOBEE (No. 12,) ROOCHEE DOOBEE (No. 13,) PURREEAG DOOBEE (No. 14,) BULDEO DOOBEE (No. 15,) AND SEW CHURN DOOBEE (No. 16).

Shahabad.

1854.

October 19.

Case of NUSSEEB DOOBEE and others.

The sentence passed on prisoners for affray upheld: except on one who was acquitted, the evidence against him being deemed unsatisfactory.

CRIME CHARGED.—Affray attended with wilful murder of Sumbhoo Doobee and wounding Nusseeb Doobee on one side, and Purreeag Doobee and Sew Churn Doobee on the other side.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Sumbhoo Doobee and wounding Nusseeb Doobeo on one side, and Purreeag Doobee and Sew Churn Doobee on the other side.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad on the 25th April, 1854.

Remarks by the sessions judge.—This is one of those cases of affray which are of so frequent occurrence in this district. Both parties met, a quarrel arising regarding the paddy crop, a fight ensued, and the deceased was killed by a blow of the deadly *lattee.*

The facts are attested by eye-witnesses who gave their own coloring to the circumstances according to the connection with the parties or interest in the case.

Four of the men were wounded besides the unfortunate man who lost his life.

The prisoners plead not guilty and each gives in his defence, his own version of the affair. The evidence in fact supports the prosecution. The *futwa* convicts the whole of the prisoners of affray with culpable homicide and wounding, and declares them liable to '*seasut.*' Prisoner No. 13 is proved to have inflicted the blow under which the deceased fell.

Sentence passed by the lower court.—No. 14, to be imprisoned with labor in irons for seven (7) years. Nos. 12, 13, 15 and 16, each to be imprisoned with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) There is sufficient evidence to prove that the prisoners Nusseeb No. 12, Purreeag No. 14, Buldeo No. 15 and Sew Churn No. 16, were at the affray and actively engaged, and the evidence is corroborated by all of them being wounded except Buldeo and by their several defences. The evidence however against Roochee No. 13, is not satisfactory, and two of the witnesses have testified that he was with them going to cut grass when they saw the affray. He is therefore acquitted and ordered to be released.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS. *Judges.*

GOVERNMENT

versus

24-Pergunnahs.

1854.

October 20.

MEEAJAN SHEIKH (No. 1,) CHUTOORBHOOJ ROY (No. 2,) GUNGARAM BAGDY (No. 3,) AND RAMDYAL SHAHA (No. 4.)

Case of SHEIKH MEEAJAN and others.

The conviction as regards all the prisoners and the sentence against one was altered.

CRIME CHARGED.—1st count, burglariously entering the house of the prosecutor Nilcomal Mitter, and stealing therefrom property to the amount of Rs. 769-6; 2nd count, theft of property to the amount of Rs. 769-6, from the house of the prosecutor Nilcomal Mitter; 3rd count, receiving portions of the above property, knowing it to have been stolen; 4th count, privity to the above crimes.

CRIME ESTABLISHED.—Burglariously entering the shop of the prosecutor, and stealing therefrom property belonging to him.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 25th July, 1854.

Remarks by the officiating additional sessions judge.—The prosecutor resides in the suburbs of the town and was robbed on the night of the 2nd May last, of property to the amount of Rs. 769-6. The robbers effected a burglarious cutting into the house, and taking the keys out of a box by forcing it, opened a chest which contained the valuables. These they took off and accomplished the work so dexterously that the prosecutor was not aware of the theft till the morning. He apprised the police of the affair with but little prospect of recovering his lost property. Two days subsequently however he heard that some parties had been arrested in the town with stolen property. He repaired to the police office and there found part of the valuables he had lost. The parties so arrested were the prisoners Meeajan Sheikh No. 1 and Chutoorbhooj Roy No. 2. They were convicted by the Calcutta magistracy and sentenced to two months' imprisonment in the house of correction for being in possession of property, for which they could not satisfactorily account. During their incarceration, the magistrate of the 24-pergunnahs visited the house of correction, and elicited from them the whole particulars of the robbery. He recorded their confessions in due form and on the information so obtained, apprehended the other prisoners. These also made admissions of guilt to the extent of being privy to the robbery. All the prisoners are

men of notoriously bad reputation. The prisoner Meeajan has been convicted on five previous occasions, both in Calcutta and the suburbs, and appears perfectly incorrigible. The prisoners Gungaram Bagdy No. 3, Ramdyal Shaha No. 4, have been twice before convicted and sentenced, and the prisoner Chutoorbhooj was arrested with the stolen property, most probably on his return from committing the robbery. He is the constant companion of the prisoner Meeajan and always seen drinking and gambling in his company.

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Case of SHEIKH MEEAJAN and others.

The prosecutor preferred his charge against the prisoners Nos. 1 and 2 as soon as they were released from the house of correction. The magistrate is deserving of much praise for the activity and judgment displayed by him in tracing this robbery, and bringing it to a successful issue.

Sentence passed by the lower court.—Prisoner No. 1 to ten years and Nos. 2, 3 and 4 to seven years each with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court observe that the sessions judge has convicted all the prisoners of the burglary and theft, but there is nothing in their admissions which convicts Nos. 1, 2 and 3 of more than having property in their possession, knowing it to have been acquired by the burglary and theft, and No. 4 can only be convicted of privity to it. The Court convict them accordingly, and upholding the sentences passed upon Nos. 1, 2 and 3, sentence No. 4 to five years' imprisonment with labor and irons.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

Cuttack.

1854.

October 20.

Case of RAMCHUNDER SEHLEE and another.

GOVERNMENT AND RAMPERSHAD CHOWDREE *versus* RAMCHUNDER SEHLEE (No. 3,) AND LALCHAND PURWAR (No. 4.)

One of the prisoners was acquitted for want of sufficient proof. The Court concurred with the law officer in the verdict against the other.

CRIME CHARGED.—The prisoners, Nos. 3 and 4, are charged with having, on the 30th July, 1854, corresponding with the 17th Srabun 1261, Waylayutee, stolen from the room occupied by the prosecutor, Rampershad Chowdree Imliah, Rs. 2,225 in cash, and three bags valued at one anna, altogether property to the value of Rs. 2,225-1-0. The prisoner, No. 3, is charged on a 2nd count with having in his possession Rs. 2,194, being part of the money stolen from the prosecutor, knowing that it had been so stolen on the 30th July, 1854.

1854. October 20. Case of RAMCHUNDER SEHLEE and another.

Committing Officer.—Mr. R. P. Harrison, magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 2nd September, 1854.

Remarks by the sessions judge.—The following are the particulars of the case.

Rampershad Chowdree Imliah, the joint-prosecutor with Government, stated that he lived in the same house with Lalchand Purwar, the prisoner No. 4, and Heera Lal, released by the magistrate, and at about noon on Sunday, the 30th July, he went to the bazar to make some purchases, having first locked up his money Rs. 2,225 in a box secured by two padlocks and placed it in charge of the said two persons, the first of whom, Lalchand, always kept the key of the door of the house; that on his return home, between 4 and 5 P. M., he found the door of the house closed and locked, and after waiting there a short time, Lalchand arrived and stated that he had been sent to the post office by Ramchunder Sehlee, prisoner No. 3, and on his unlocking the door of the house, he, deponent, went in and proceeded to open his box, which he found locked as he had left it, but on opening it, he discovered that the whole of his money was gone. That he then gave information at the thannah and the next morning, the darogah searched the houses of the different persons whom he suspected, but found nothing in any of them, except in the house of Ramchunder Sehlee, prisoner No. 3, in which in an old box, without a lock, on which were strewed some leaves and old gunny, was found Rs. 196, which he, deponent, claimed, but the darogah left them in charge of the prisoner, stating that they were not capable of identification, and Lalchand and Heera Lal were taken to the thannah. That while they were there, Ramchunder Sehlee took them some *pooree*, a sort of bread to eat, which strengthened the darogah's suspicion against him and he told him, deponent, to watch his movements which he did, and having observed him frequently pass to and fro between his house and cow-house, he suspected that his money might be concealed in the cow-house, and on Wednesday evening, he reported the circumstance at the thannah, when a guard was placed over the prisoner's cow-house and the rest of his premises, and on searching the cow-house the following morning, an earthen pot, containing Rs. 1,998 was found concealed in a heap of lime, which, in the first instance, Ramchunder Sehlee claimed as his own, but subsequently stated at the thannah that when he took the *pooree* to Lalchand and Heera Lal at the thannah the former told him there were Rs. 2,000 buried in the lime in his cow-house, and he in consequence concluded that the money belonged to him, deponent.

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Witness No. 1, Ameer Khan jemadar.
" " 2, Mungul Singh jemadar.
" " 3, Chyetun Kur.
" " 8, Soobadhee Neckap.
" " 9, Basoo Naik.

Deposed to the finding of Rs. 196 in the open box and Rs. 1,998 in the lime in the cow-house of the prisoner No. 3, and to his having claimed both sums at the time of their production as his own property, &c.

Witnesses No. 3, Chytun Kur and No. 4, Pitbas Neckap.

Further deposed that Ramchunder Sehlee, the prisoner No. 3, stated at the thannah that Lalchand, the prisoner No. 4, told him, that there were Rs. 2,000 buried in the lime in his cow-house.

Witnesses No. 10, Gobind Dass and No. 11, Sunkar Sahoo.

Deposed that they accompanied the prosecutor, Rampershad Chowdry, to his house about 4 P. M. on Sunday, the day of the theft, to get paid for a silver chain, which he had purchased from witness No. 11, and on reaching the house they found the door locked, and no one present, that shortly afterwards Lalchand, prisoner No. 4, came and unlocked the door, when Rampershad Chowdry entered the house, and discovered that his money had been stolen and told witness No. 11, that he was unable to pay him the sum due to him.

Ramchunder Sehlee, prisoner No. 3, stated before the magistrate that on the morning, after Lalchand and Heera Lal were apprehended and confined at the thannah, the darogah sent for him and told him to bring something for the said persons to eat, and that when he took them some *poorees*, Lalchand informed him that Rs. 2,000 were buried in the lime inside his cow-house, and he concluded the money belonged to the plaintiff, but he told no one, and was keeping watch over the place where the money was, when the jemadar came and placed a guard over his premises; and in the morning when the money was found, he claimed it as his, but afterwards told the above story to the darogah, that he did not know how or when the money was brought to his cow-house, and that the rupees 196 found in the box inside his house were his own.

Lalchand, the prisoner No. 4, stated before the magistrate that Rampershad Chowdry, the prosecutor, locked up his money in his own box in his, the prisoner's house, in his presence, and went to the bazar, and that the key of the door of the house remained with him, the prisoner; that shortly after the departure of Rampershad Chowdry, while he was sitting in the house, Ramchunder Sehlee, prisoner No. 3, called him to his shop and sent him with a letter to the post office, and on his return thence, he sat sometime at the shop of a Marwar merchant in the Baloo bazar, after which he went and delivered the receipt for the letter to Ramchunder Sehlee's nephew, and then went to

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his own house, where he saw Rampershad Chowdry standing with the witnesses, Nos. 10 and 11, and on Ramchunder's telling him to unlock the door he did so, and Ramchunder entered the house, unlocked his box, and discovered that his money was gone; and on his questioning him regarding the money, he said he knew nothing about it, but as Ramchunder Sehlee had sent him to the post office, he suspected him of having taken it, and told him to go and give information at the thannah and cause his house to be searched. He also stated that eight days previously, Ramchunder took the key of his door from him, and while he was inspecting it, measured it with his finger and perhaps he might have had a key made like it. He also affirmed that Ramchunder had stated that he told him the money was concealed in the lime in his cow-house, because he had in his presence informed Rampershad Chowdry that he suspected him.

Witnesses Nos. 6. Biddadhur Mahanty Mooktear and No 7, Kirpasindhoo Mahanty Mooktear.

The confession of Ramchunder Sehlee, prisoner No. 3, before the magistrate was duly verified by the subscribing witnesses.

Before this court, both prisoners pleaded *not guilty* to the charges preferred against them.

Ramchunder Sehlee, No. 3, stated that the money found in his house and cow-shed was his own, and that the police beat him to accuse Lalchand, No. 4, and Heera Lal released by the magistrate, with having stolen the money.

Lalchand, No. 4, adhered to the statement made by him before the magistrate, and previously before the police, and the prosecutor.

The *futwa* of the law officer acquits both prisoners of the charge of theft and convicts Ramchunder Sehlee, No. 3, on his thannah and foujdary confessions of having in his possession the stolen property knowing it to have been stolen, and Lalchand Purwar, the prisoner No. 4, on his examination before the magistrate of privity to the theft before the fact.

But from the above verdict, I dissent. And as the stolen property or the greater portion of it was found in the possession of Ramchunder Sehlee, the prisoner No. 3, without his being able to adduce any proof or satisfactory explanation how it came into his possession, the story about Lalchand's having informed him that the money was in his cow-house at the time he took him the *pooree* being manifestly false; for had Lalchand then spoken to him about the rupees, the burkundaz and others in charge of Lalchand and Heera Lal must have also heard him, I would convict him on both charges; and as there exists no legal proof but merely suspicion of Lalchand having been accessary or privy to the theft, and Rampershad Chowdry himself admits that he at once charged or stated that he suspected Ramchunder Sehlee of having stolen

the money in consequence of his having sent him to the post office, and notwithstanding he was in possession of the key of the door of the house, there was nothing to prevent Ramchunder Sehlee's procuring another key that would open the door, for though the lock in question was of a peculiar description, all native locks of their several sorts are very similar, I would acquit and release him.

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I therefore recommend that Ramchunder Sehlee be sentenced to seven (7) years' imprisonment with labor in irons, and that Lalchand be acquitted and discharged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) Having examined the proceedings, we agree with the sessions judge that there is not sufficient proof against Lalchand for conviction. We therefore acquit him and direct his release. We concur with the law officer in convicting Ramchunder Sehlee of only having in his possession the stolen property knowing it to be stolen, but we sentence him, as proposed to seven years' imprisonment with labor and irons.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

AURUTH SAHOO.

Cuttack.

1854. October 24. Case of AURUTH SAHOO.

Prisoner convicted of rape on a child about nine years old, and sentenced to seven years' imprisonment with labor in irons.

CRIME CHARGED.—Rape on the person of Jema, the foster daughter of the prosecutrix, a girl aged at that time about nine years.

Committing Officer.—Mr. T. B. Lane, assistant magistrate of zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of zillah Cuttack, on the 21st September, 1854.

Remarks by the sessions judge.—The particulars of this case are as follows.

At about 1 P. M. about the middle of the month of Kartick 1261, corresponding with October 1853, while Ruttunmonee the prosecutrix was sitting at the house of her neighbour Heera (in the Buxshy or regimental bazar in the town of Cuttack) conversing with her and others, the prisoner Auruth Sahoo the paramour of Ruttunmonee went to her house, and shortly afterwards, Golabee one of her girls, witness No. 3, having gone to a neighbouring well to draw water, in her return to the house found Jema a child nine years of age standing or lying naked

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near the door writhing with pain and blood streaming from her person, and called out to Ruttunmonee to come quickly, whereupon Ruttunmonee with Heera, Subjee and Gouree with whom she was conversing went immediately and learned that Jema had been violated by Auruth Sahoo. The prosecutrix then assisted by the others attended to Jema, who is said to have been suffering great pain, and a few hours afterwards gave information to Bhagbut Chowdry witness No. 9, attached to the regimental bazar, who again communicated the occurrence to Bhola Baboo his immediate superior, and by his order, went to the house of Ruttunmonee and saw Jema lying insensible, and her clothes, &c. saturated with blood. And on the following morning he with the said Bhola Baboo took Jema and Ruttunmonee before the adjutant of the 42nd regiment M. N. I, who sent them to the police thannah, when the darogah deputed a jemadar and burkundaz in search of Auruth Sahoo, but he was not to be found; and the darogah having neglected to report the occurrence to the magistrate, nothing more was done in the matter till the 6th of the current month of September when Auruth Sahoo was taken before the adjutant by one of the sepoys or native officers of the regiment on a charge of cheating, or making some silver ornaments short of the weight agreed on or charged for, and one of the party present having indicated him to the adjutant as the individual who had ravished Jema some months previous, he forwarded him with a note to the magistrate, who referred the case for investigation to the committing officer, Mr. Assistant T. B. Lane.

Goolabee, witness No. 3, aged fifteen deposed that about 1 P. M. on the day of the occurrence, while Ruttunmonee was sitting at the house of Heera witness No. 5, the prisoner Auruth Sahoo came to the house, and on Jema's informing Ruttunmonee that "her father" had come, she told her to give him some tobacco and *pan*, and tell him she was engaged talking with her neighbour, and on Jema's return to the house, Auruth Sahoo told her to *shampoo* his back, and she sat down to do so when witness went to draw water from a neighbouring well, and on her return found Jema in the condition above described, and gave the alarm to Ruttunmonee. She likewise stated that she saw Auruth Sahoo abscond from the house by a back-door in the direction of his own house.

Subjee, Heera, and Gouree, witnesses Nos. 4, 5, and 6 as well as Ruttunmonee the prosecutrix, deposed generally that they saw the prisoner Auruth Sahoo pass by Heera's house, where they were sitting conversing together and go towards Ruttunmonee's house, also that Jema informed Ruttunmonee that her father, alluding to the prisoner, had come to the house, and that when Goolabee returned from drawing water at the well, she called out to Ruttunmonee to go to the assistance of Jema,

and that they all went and saw her naked, with blood flowing from her person, and heard that Auruth Sahoo had violated her. 1854.

Mooneeah witness No. 7 deposed that she saw the prisoner absconding after the occurrence from the direction of Ruttunmonee's to that of his own house. October 24.

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Bhagbut Chowdry witness No. 9, deposed that after receiving information of the occurrence from Ruttunmonee, he, by order of his immediate superior, Bhola Baboo, went to the house and saw Jema in a state of insensibility, and blood on her clothes and about the house, and that next day he took her before the adjutant.

Dr. G. S. Scott, the civil surgeon, deposed that he examined the person of Jema, and that she had lost all traces of virginity.

Mahomed Alli Khan jamadar, and Wahid Beg, witnesses, summoned by this Court deposed that in the month of Kartick last, they, at the direction of the police darogah, searched for the prisoner at his house, but could not find him and were told by his neighbours and others he had gone somewhere.

The child Jema was not examined on oath before the assistant magistrate, because, as is stated, she did not understand the nature or obligation of such oath.

The prisoner Auruth Sahoo pleaded *not guilty* throughout the investigation, and stated that he left Cuttack to go to Killah Sookindah, the day before the occurrence, and heard on the road that he had been accused of commiting a rape on the person of Jema.

The *futwa* of the law officer, which accompany this report, convicts the prisoner Auruth Sahoo of the crime of rape on violent presumption, and in this verdict I concur. For notwithstanding Ruttunmonee, as objected to by the prisoner, in the first place stated before the seristadar of the magistrate's court, who was deputed to hold local enquiry into the case, that she had no witnesses, and therefore did not cause the apprehension of the prisoner, and I do not think implicit confidence can be placed on the testimony of Ruttunmonee, or that of witnesses Nos. 4, 5 and 6 regarding their having seen the prisoner go to the house of Ruttunmonee at the time of the occurrence, it is satisfactorily proved that Jema was ravished; and I see no reason to doubt the truth of the evidence given by Goolabee witness No. 3, or of the fact of the above witnesses having accompanied Ruttunmonee to her house and seen the distressed state in which Jema was, and heard from her and Goolabee, that Auruth Sahoo was the individual who committed the rape on her. In short, I consider the fact fully corroborated by the flight of Auruth Sahoo, immediately after the occurrence, and his own statement to the effect that he heard on the road to Sookindah that he had been accused of ravishing her. And so far from Ruttunmonee's being desirous to procure his punishment, or

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charge him falsely, it is evident that he being her paramour and in the habit of co-habiting with her before and subsequent to the rape, she did everything in her power to screen him after Jema recovered. I therefore beg to submit the case for such orders as the Court may think fit to pass.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, concurring with the mooftee and the sessions judge, convict the prisoner of rape on violent presumption, and adverting to the tender age of the child, sentence him to seven years' imprisonment with labor in irons.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT

versus

SHEIKH BUKTEAR.

Mymensingh.

1854.

October 24.

Case of Sheikh Buktear.

Prisoner convicted of severely wounding his wife with intent to murder her, sentenced to 14 years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Severely wounding Runjun Aurut, with intent to murder her.

CRIME ESTABLISHED.—Severely wounding Runjun Aurut, with intent to murder her.

Committing Officer.—Mr. C. E. Lance, assistant with powers of joint-magistrate at Jamalpore.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh on the 18th August, 1854.

Remarks by the sessions judge.—The prisoner and his wife, the wounded woman, Runjun, lived in the premises of witness No. 6, Koosha Sheikh, uncle of the prisoner, and she desired him to go to her brother's house and ask him to come and take her there, as she was in the family-way and disliked the house of her husband's uncle; on the night of the occurrence before day-break, she asked him if he had been to her brother, and abused him; upon this, he became enraged and seizing a sickle, used for cutting grass with, which was hanging in the room, he cut her throat with it. Her screams immediately attracted witness, No. 6, and (prisoner's brother) No. 9, who occupied an adjoining house in the same premises and who saw the prisoner holding his wife's hair with one hand and the sickle in the other, and the woman covered with blood, they (the witnesses) then took them out and saw that she had a severe wound on her throat and three on the right hand. On the neighbours collecting, he was immediately secured, and made over to the village chowkeedar.

The prisoner throughout admitted having wounded his wife in the manner described for her having used unbecoming lan-

guage to him. The law officer, declares him guilty of the crime charged and liable to *seasut.* I concurred in the verdict, and sentenced him to fourteen years' imprisonment with labor and irons, considering from the instrument used, and the throat being cut in a most severe manner, that the proof was conclusive as to his intent to murder his wife. Happily the woman's screams attracted the witnesses and neighbours in time to prevent his designs from terminating fatally.

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Case of SHEIKH BUKTEAR.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner after admitting throughout that the wound on his wife had been inflicted by him, asserts in appeal that his wife had listened to one Shooteeah and wished to leave him (her husband) which had induced him to chastise her, and in consequence of the beating she attempted to cut her own throat. Shooteeah then accused him of the deed, and under the persuasion of the darogah, he confessed before the magistrate that he did it.

The evidence of the woman, however, and of the other witnesses, leaves no room for doubt, and I concur in the prisoner's conviction and reject his appeal.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

MUNDUL SHIKILGAR.

Patna.

1854.

October 24.

Case of MUNDUL SHIKILGAR.

The evidence against the prisoner, appellant, being convincing, though circumstantial, the sentence passed on him upheld.

CRIME CHARGED.—1st count, burglary and theft of property, valued at Rs. 131, belonging to Hurruk Singh; 2nd count, knowingly receiving part of the stolen property aforesaid.

CRIME ESTABLISHED.—Knowingly receiving part of the stolen property.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 18th July, 1854.

Remarks by the sessions judge.—The prisoner in this case is one of a body of men tried before this court in March last, see No. 1, calendar of that month, where the prisoners were acquitted for want of evidence; Mundul, who is now on trial, effected his escape at the time from witness No. 1, who is a Chowkeedar, but a gun, the property of the prosecutor, was wrenched out of his hand in the struggle, and upon the evidence of its identity, as part of the stolen property, he is now committed. There is some discrepancy in the depositions of witnesses Nos. 2 and 3, in

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Case of MUNDUL SHIKILGAR.

respect to points which occurred at the time of the prisoner's escape from the hands of Phagoo, but nothing more than may be accounted for by the darkness of the night, and the length of time which has elapsed since the burglary took place. It has been necessary, however, to order the commitment of one witness, No. 2, for perjury. On the whole, I consider it fully established that the prisoner is the identical Mundul found in possession of the prosecutor's stolen property, and the *futwa* of the law officer being concurrent, he is convicted on the second charge in the indictment and hereby sentenced to five years' imprisonment with labor in irons and two years additional in lieu of stripes, altogether seven years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The facts proved in the case, of the prisoner having been seized carrying away the gun, in the *night* time from the house of a man strongly suspected of the burglary committed in the house of the prosecutor, who identified the gun as the one stolen from him; and of the prisoner being freed from the chowkeedar who had seized him, by the suspected person: and lastly, the flight and absence of the prisoner from his house for months from that very night, are violently presumptive of his guilt. The Court, therefore, see no reason for interfering with the sentence passed on the prisoner by the sessions judge.

Backergunge.

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Case of NUBBOKISHEN SHAHA and others.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

GOVERNMENT,

versus

TRIAL NO. 2. NUBBOKISHEN SHAHA.

TRIAL NO. 3. NUBBOKISHEN SHAHA (NO. 12,) KISTO MUNGUL CHUND (NO. 13,) AND MEHER ALLY (NO. 14.)

In a conviction of uttering a forged document, surbornation of perjury and perjury, the sentences passed by the sessions judge were upheld in appeal.

CRIME CHARGED.—Trial No. 2, 1st count, maliciously and fraudulently procuring a forged document against Dhun Chowdree and Sheeb Singh; 2nd count, uttering and causing to be uttered the above forged document. Trial No. 3, prisoner No. 12, with subornation of perjury in causing the prisoners, Nos. 13 and 14, to depose under a solemn declaration taken instead of an oath before Syud Abdoollah, the acting moonsiff of Burrisaul, zillah Backergunge, that Dhun Chowdree and Sheeb Singh had borrowed from him (prisoner No. 12,) Co.'s Rs. 50,

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on a bond, which bond was executed on the 15th Srabun, 1254, and that they (prisoners Nos. 13 and 14,) were attesting witnesses to that bond, such deposition being false and having been intentionally and deliberately caused to be made by the prisoner No. 12. Nos. 13 and 14, charged with perjury, the former in having on the 18th July, 1853, and the latter in having on the 19th idem, deposed under a solemn declaration taken instead of an oath before Syud Abdoollah, acting moonsiff of Burrisaul, zillah Backergunge, that Dhun Chowdree and Sheeb Singh had borrowed Co.'s Rs. 50, on a bond from the prisoner, No. 12, which bond was executed on the 15th Srabun, 1254, and that to that bond they (prisoners Nos. 13 and 14,) were attesting witnesses, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Trial No. 2, prisoner No. 12, uttering a forged document. Trial No. 3, prisoner No. 12, convicted of subornation of perjury, and prisoners, Nos. 13 and 14, of perjury.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 5th June, 1854.

Remarks by the sessions judge.—The prisoner in this case sued the two eye-witnesses, No. 6, Sheeb Singh, and No. 7, Dhun Chowdree, in the Burrisaul moonsiff's court, on a bond alleged to have been executed to him by them jointly. The bond was dated 15th Srabun, 1254, and was for 50 Rs. During the trial of the suit, when the bond came to be closely inspected, it became apparent that the bond was dated eleven months and fifteen days prior to the purchase of the stamp paper and was, therefore, to all appearance, a forgery. An investigation into this matter was immediately set on foot, and the result was that the prisoner was made over to the magistrate, by whom he has been committed to stand his trial in this calendar, for procuring a forged document and giving utterance to it, and in calendar No. 4, for having suborned the evidence of the persons produced by him to depose to the bond in the moonsiff's court. These two cases springing out of the same transaction, it is better to dispose of them together in the same place.

The charges of uttering a forged deed and of subornation of perjury, as laid to the prisoner in the two calendars, are fully substantiated by the evidence adduced against him.

His defence has all along been that he knows nothing of the bond, that he never lent the money, and that he had nothing to do in producing the witnesses who attested the bond in the moonsiff's court. However, as already observed, the evidence

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against the prisoner is complete in every respect. It is proved* that he signed the *vakalutnamah* for the purpose of instituting the action,† that he personally delivered the bond into his mooktear's hand to be filed as proof, that he accompanied‡ his witnesses into the station, and remained with them at his mooktear's residence, while they remained here awaiting their examination before the moonsiff, and that he constantly came to his mooktear to enquire how his suit was getting on: that the bond is a forgery is directly proved by the evidence an oath of the two parties,§ by whom it was alleged to have been executed, and by the fact that it was morally impossible that the bond could be true, seeing that the stamp paper on which it is engrossed, was not purchased for nearly a year after the date of its recorded execution.

* Witness No. 1, Ramkissore Doss.
2, Becharam Dutt & Kebulkisto Chatterjia.
,, ,, 3, Ramrumun Doss.
,, ,, 4, Budun Chunder Doss.
,, ,, 5. Nussoruddin and Kebulkisto Chatterjia.
,, ,, 8, Ramkanye Bose.
,, ,, 9. Srenath Mozoomdar.
,, ,, 10 Doorga Churn Roy and Kebulkisto Chatterjia.

§ Witness No. 6, Sheeb Singh.
,, ,, 7, Dhun Chowdree.

The defence of the prisoners, No. 13, Kisto Mungul Chund, and No. 14, Meher Ally, the witnesses who gave their evidence before the moonsiff in support of the bond, is that the money was really lent by the prisoner No. 12, Nubbokishen Shaha, that it was received by the parties executing the bond, and that they, the prisoners, were witnesses to it. That the whole transaction is true from beginning to end, but unfortunately the date of the transaction, which ought to have been the 15th Srabun, 1255, was erroneously and inadvertently stated in the bond, 15th Srabun, 1254. It is however very unlikely that in drawing up an obligation for money, the parties would have made a mistake *in the year*,—in the day a mistake might occur, but in the year, it is not in the least likely. Supposing even that such might have been the case, is it to be believed that the error would not have been discovered very soon afterwards, when the party to whom it belonged took it out for inspection, as it is natural to suppose he often did, but the error, if error it was, was not noticed till it was detected on the trial in the moonsiff's court, and the prisoners in their deposition stated distinctly that the year in which the bond was executed was 1254.

The law officer found the prisoners guilty and they were sentenced accordingly. Prisoner No. 12, to a consolidated sentence of five years on a conviction of uttering a forged deed and subornation of perjury, and the other prisoners to three years on a conviction of perjury.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) Nothing can be more convincing than the evidence

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for the prosecution proving that Nubbokishen instituted the suit, paid the expenses and forwarded the bond to his agent to be filed in the action. His defence repudiating all these acts of his is in itself sufficient to support a presumption of his guilt. It is not likely that the witnesses would have given a wrong date to the transaction in their deposition, merely on the ground that a clerical error had been committed by the writer of the bond regarding the true date, and that the same error would be found repeated in the pleadings, &c. I see no reason to interfere with the convictions of all the prisoners and reject their appeals.

PRESENT:

A. DICK, ESQ., SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND PURAUN RAM DASS

versus

RAMJIBUN ALIAS JEEBUN CHUNG.

Sylhet.

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Case of RAMJIBUN alias JEEBUN CHUNG.

The prisoner as sentenced to transportation for life, for having in disengaging himself from a peadah who had no legal authority to seize him, killed him. His plea that he did it in defence of his life, not being substantiated.

CRIME CHARGED.—Wilful murder of Dagooram Dass.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 8th September, 1854.

Remarks by the sessions judge.—The prisoner pleads guilty to the charge, and the circumstances under which the murder took place, are best told by himself.

He states that he and one Moolie caught one Bolie Chung stealing a *dhurree* or fish-trap, and that they beat him and let him go. That he went and complained to his zemindars, Kanooram and Pandubram, and that they sent the deceased to apprehend them. That when the deceased caught him he struggled to get loose, but being unable to effect his escape and getting angry, he struck the deceased with a *dao*, and on his falling, repeated the blows, and that seeing he had killed him, he ran away.

This story is confirmed by the witnesses; and the *post mortem* examination shews that the deceased had eight wounds inflicted on him, two of which, one on the chest, and the other on the throat, caused his death.

The confessions are proved to have been voluntarily made and the prisoner in extenuation urges before this Court that he committed the deed to save his own life.

The arrest of the prisoner by the deceased was clearly illegal, and the provocation received by him was great, but he armed

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himself with the *dao*, before the deceased arrived and deliberately killed him, when he had lost all power of resistance.

The jury convict the prisoner of wilful murder, and in this verdict I concur, but under the circumstances, I am of opinion that a sentence of fourteen years' imprisonment with labor in irons will be sufficient.

As it appeared from the deposition of Moolie Chung that the zemindars had imposed a fine of 5 Rs. upon him and the prisoner, the magistrate has summoned them to answer for their illegal act.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, Sir R. Barlow and Mr. B. J. Colvin.)

Mr. A. Dick.—There are no eye-witnesses to the crime except the testimony of one witness who saw one blow struck. The prisoner in his confessions has stated, he was about going out to cut grass and had the *dao* or the bill-hook in his hand, when the deceased seized him. They struggled and finding the deceased would not release him, struck him repeatedly till he fell, then seeing he had killed him, fled. This is the purport of his confession before the magistrate. The confessions before the police and at the sessions are evidently not trustworthy in their details, that before the police telling much more against him, and that at the sessions almost justifying him: for he there said, he had been disgraced, and was in fear of his life. The appearances of the wounds on the body, corroborate the above confession before the magistrate. There is no evidence to prove that prisoner armed himself with the *dao* for *defence;* he expressly states he took it to cut grass. He was suddenly seized, and his attack on the deceased was equally sudden. Had he desisted from repeating the blows with the *dao*, when the deceased on receiving the first cut, released his hold, the conduct of the prisoner might have been justified, as the act of seizure by deceased was illegal. The subsequent deadly blows he dealt, convict him of culpable homicide of an aggravated nature, and I would sentence him to fourteen years' imprisonment, as recommended by the sessions judge. This is the heaviest sentence, which can, I think, be passed with advertence to the case of Ramchurn Rai, N. A. Reports, 5th February, 1852. The prisoner in that case as in this, killed his victim when committing an illegal act, and when he was incapable of resistance. He was sentenced to seven years' imprisonment; and that sentence was afterwards cancelled, after a short period, by the Governor-General at the recommendation of a majority of the judges of the Sudder Nizamut, as being too severe, without any thing new being brought to light.

Mr. B. J. Colvin.—I consider that under all the circumstances of this case, a sentence of not less than transportation for life should be passed upon the prisoner. The only thing in his

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favor is, that he acted without premeditation, otherwise he would, in my opinion, have been liable to a sentence of death.

Without regarding the thannah confession, according to which the prisoner struck the deceased several times after he had been felled to the ground by the first blow, his confessions before the magistrate and sessions judge shew that on his seizure by the peadah he at once attacked him with the *dao*, which he had in his hand, and struck him repeated blows with it; which ended in the man's almost instantaneous death. The prisoner added before the sessions judge, that the deceased had a *lattee* and had by entering his premises disgraced him, and put him in fear of his life, but besides that, he did not tell the magistrate this story, there was nothing in the circumstances of his capture, which should have put him in fear of his life, and the weapon was not therefore required to be used for self-defence. He may have used it in a sudden fit of passion at being seized, but there was nothing in the mode of seizure to justify his disengaging himself at the expense of the peadah's life, which he took unnecessarily, as the peadah does not appear to have held hold of him to the last.

Sir R. Barlow, Bart.—I concur with Mr. Colvin in sentencing the prisoner Ramjibun to transportation for life. His story before the sessions judge, of having acted in defence of his own life, is clearly an after-thought prepared no doubt during his confinement in the jail previous to his commitment to the sessions. Before the police and before the magistrate also, he fully admitted that he cut down the deceased, because he had seized him by order of the *Meerasidar*, in neither of the confessions is any allusion made to the deceased having a *lattee* with him, nor is any thing said by the prisoner of his being in fear for his life, and of his having done the deed in self-defence. The corpse exhibited as many as seven or eight wounds, and death ensued immediately after they were inflicted.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND PREMCHAND

versus

SHEIKH BECHOO (No. 1,) MEER PEERBUX (No. 2, APPELLANTS,) AND SHEIKH ELAHEEBUX (No. 3.)

24-Pergunnahs.

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Case of SHEIKH BECHOO and others.

The prisoners' appeal was rejected, their mofussil confessions having been corroborated by the finding of the property.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor Premchand Kulloo and theft of rupees and property to the amount of Rs. 338-3 therefrom; 2nd count, receiving the stolen property knowing it to have been such.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 21st July, 1854.

Remarks by the officiating additional sessions judge.—This is a case of house-breaking by cutting the fastening of the mat-fence used as a door. The prosecutor and his family were asleep at the time the robbery was committed, and can give no account of the affair, but it appears from the admissions made by the prisoners that it was concerted and executed conjointly by them in the manner therein set forth. When the prosecutor got up about 4 A. M., he perceived by a candle which he had occasion to light, that the lid of his large chest had been forced. The box was open, but the valuables it contained were gone. These consisted of two *ungoots* of gold, some pieces of old silver, a *tusser* silk *dhootee*, another cloth ditto with a scarlet edge, a child's silver waist chain, and cash to the amount of Rs. 290. As soon as it was morning, the prosecutor apprized the chowkeedar of the theft and his suspicions immediately fell on Sheikh Bechoo, prisoner No. 1, who was absent from home during the night, having twice neglected to answer his challenge. The chowkeedar communicated his suspicions to the darogah, who had Bechoo apprehended and brought before him, when the prisoner made a detailed confession of the crime, naming his co-prisoners as his accomplices and giving a full account of the division of the plunder, and the share each person got. He stated that his portion consisted of 100 rupees in cash, some pieces of old silver and a *tusser dhootee*, adding that he had advanced 90 Rs. from that amount as a loan to one Abdool Hamid and given the old silver to be made up into bangles for his mistress to a silversmith of the name of Phul Chand. The man Abdool Hamid confirmed the truth of his statement on oath and produced the money, the silversmith Phul Chand also corroborated the statement and

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brought ten small bars of silver, alleging that he had prepared them from the old silver given to him by the prisoner for the purpose of manufacturing the ornaments and the prisoner's mistress, the witness Amirun Raur, gave up the *tusser dhootee* as received from the prisoner. The other prisoners were arrested on the confession of Bechoo. The prisoner Peerbux, No. 2, admitted his guilt at the thannah and said that he also had received the sum of 100 rupees as his share of the booty which, together with 75 rupees in his possession at the time, he had locked up in a box. That aggregate amount was found in his house. The prisoner Elaheebux Sheikh, No. 3, confessed both before the police and the magistrate. He admitted that his share of the spoil were 20 rupees in cash, a silver waist chain and a new scarlet edged *dhootee*. He further stated that he had purchased a sovereign for 10 rupees, and converted the balance into a 10 rupees Bank Note and had left the *dhootee* at the house of the witness, Amirun: on the premises of his mistress, the witness Azimunnissa, were found the sovereign and the Bank Note, and the woman Amirun gave up the *dhootee*. There is a slight discordance between the mofussil and foujdary confession, which consists in the alleged amount of cash received as booty. In the former, that amount is fixed at 20 rupees and in the latter at 15 rupees, the additional 5 rupees required to purchase the sovereign and Note, being supplied from the prisoner's own resources. Independent of the prisoners' admissions and the remarkable corroboration they receive from the finding and recovery of the property, the testimony of Amirun Raur goes distinctly to prove that the prisoners were together on the early part of the night of the robbery, and were seen towards morning making a division of cash and other property. This evidence comes with double force when it is remembered that the deponent is the creature of the principal prisoner, and naturally interested in his welfare. This is an admirable case, and reflects much credit on the magistrate.

Sentence passed by the lower court.—Nos. 1 and 2 to be imprisoned with labor and irons in banishment for nine (9) years each, and No. 3 to be imprisoned with labor and irons in banishment for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We see no reason to interfere with the conviction of the prisoners, Nos. 1 and 2, who have appealed, or with the sentences passed upon them. Their confessions before the darogah were corroborated by the production of nearly all the property stolen, and though afterwards denied by them, by the defences put forth by them, they could not substantiate. Moreover the evidence of Amirun was most convincing of their guilt.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

DOORGARAM MUNDUL.

Midnapore.

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Case of DOORGARAM MUNDUL.

The prisoner's appeal was rejected, the evidence against him being conclusive.

CRIME CHARGED.—Wilfully, maliciously and severely wounding witness No. 1 with a *lattee* on the head with intent to murder him, and thinking him to be dead, threw him into the river.

CRIME ESTABLISHED.—Assault attended with aggravating circumstances.

Committing Officer.—Moulvee Golam Safdur, law officer, exercising powers of a magistrate.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 25th October, 1854.

Remarks by the sessions judge.—This trial is supplementary to that held in this court on the 26th January last. The particulars as deposed by the witness No. 1, as stated on his previous examination and now corroborated by him, are as follow. On the night of the 27th October last, his lodging was entered by a body of men armed with sticks, who assaulted him and forcibly carried him away and threw him into the river, that with difficulty he effected his escape, and proceeded to the house of the witness No. 9, Chota Bungshee Mundul, who applied medicines to his wounds, and offered him shelter till his relations came and took charge of him. The prisoner pleads *not guilty* and sets up an *alibi*. The evidence of Seeboo Roy, witness No. 1, is fully corroborated as to the fact of his being taken away and violently assaulted though there is nothing on record, save Seeboo Roy's statement, to show that he was thrown into the river, or that his life was ever in danger. The wounds according to the medical officer's report, which was received as evidence during his absence, and the *sooruthal* were of a superficial nature, and no serious effects were likely to ensue therefrom. The assault, however, was an aggravated one made to gratify a grudge which the prisoner and others in his village had long entertained against Seeboo Roy. The prisoner totally fails to substantiate his plea of *alibi* and his running away from his village and taking service with a Mr. Martin as a peadah at Amtah, eight or ten *cos* from his home, is presumptive of his guilt in endeavoring to elude the search that has been made for him by the police. The assessors declare the prisoner guilty of an aggravated assault on Seeboo Roy, we concur in this finding and sentence him as indicated in the statement. There are some irregularities in the commitment to which the attention of the magistrate has been called.

Sentence passed by the lower court.—Three years' imprisonment without irons, and to pay a fine of fifty (50) rupees within one month, or in default of payment, to labor until the fine be paid, or the term of sentence expire.

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Case of DOORGARAM MUNDUL.

Remarks by the Nizamut Adawlut.—The prisoner was named from the very first, as engaged in the outrage. The evidence as to his *alibi* is of no value. Seeing no reason to interfere with the conviction and sentence, we reject the appeal.

PRESENT:

J. DUNBAR AND H. T. RAIKES, ESQS., *Judges.*

GOVERNMENT AND URNOPOORNAH NAPTINEE

versus

NITTAE DASS BYRAGEE (No. 1,) BENEE MOYRA (No. 2,) AND MIRTUNJOY, ALIAS MECHOO CHUCKERBUTTY (No. 3.)

Beerbhoom.

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Case of NITTAE DASS BYRAGEE and others.

Prisoners charged as accomplices in the wilful murder of a prostitute, acquitted owing to the insufficiency of the evidence.

CRIME CHARGED.—1st count, being accomplices in the wilful murder of Teloke Naptinee, daughter of Urnopoornah, prosecutrix; 2nd count, being accessary after the fact of the abovementioned wilful murder.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. T. Taylor, officiating sessions judge of Beerbhoom, on the 4th September, 1854.

Remarks by the officiating sessions judge.—The deceased Teloke Naptinee, prostitute, resided in the village of Jamooa, and was murdered on the night of the 31st Assar, B. S, 1261 or 14th July, 1854.

From the evidence of the witnesses* for the prosecution, it would appear that deceased was in company with the three prisoners, and one Ramdhun Bhoojporea (absconded) at her house, that about 10 P. M. a noise, as of a person being strangled, was heard issuing from her house by her neighbours the witnesses for the prosecution; and shortly afterwards, prisoners Nos. 1 and 3 came to witness No. 13,† and asked him to help in removing the body of the unfortunate deceased, who had been murdered, which he refused to do. Prisoners Nos. 1, 2 and 3 with the absconded party, were then seen by witnesses Nos. 13, 14 and 15,‡ carrying the body towards the *nullah*, where it was subsequently found.

* No. 13, Ramsoondar Gope.
,, 14, Jadoo Chassin.
,, 15, Sukhee Chassin.

† No. 13, Ramsoondar Gope.

‡ No. 13, Ramsoondar Gope.
,, 14, Jadoo Chassin.
,, 15, Sukhee Chassin.

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An inquest was held by the darogah of thannah Bhurtpore on the body, on which was found a wound on the right side of the head. On proceeding to the house of the deceased, it was found closed with a lock on it, and when opened, considerable quantities of blood covered the mat and pillow on which the deceased generally slept. At the foot of the mat was discovered a knife or *buntee*, partially stained with blood.

The corpse was sent in to the magistrate, and on its being examined by the medical officer of the station, he was of opinion that the party had died a violent death, that the wound on the head was the cause.

Prisoner No. 1, in defence before the court, denied all knowledge of the murder, and also of having made a statement on the matter before the magistrate.

Prisoner No. 2, in defence states he was at the house of the deceased in the afternoon of the 31st of Assar, and that he there saw prisoner No. 1, Ramsoondar Rujpoot, Byrub Sunker, Ramdhun Sircar, Ramdyal Thakoor, and Ramdhun Bhoojporea absconded, they were all seated; that he did not remain but went to his home, as he was leaving, he met prisoner No. 3 entering the premises of the deceased's house.

Prisoner No. 3, in defence states that he went to the house of the deceased at about night fall for the purpose of lighting a lamp, and he there saw one Ramsoondar Roy Rujpoot, Ramdyal Sircar and others whom, he did not recognize, seated. He did not remain, but having lighted his lamp, returned to his house. This prisoner, as well as prisoner No. 2, denies all knowledge of the crime.

The jury after considering the evidence and being warned to give the benefit of any doubt in their minds as to the guilt of the prisoners in their favor, brought in a verdict of guilty against the whole of the prisoners on the 2nd charge of the indictment: "Being accessaries after the fact of the wilful murder."

In the opinion of the court, the prisoners are guilty of both charges. The evidence of the witnesses* clearly shew that the three prisoners were present at the time the crime was committed and were heard quarrelling with the deceased, though there is no evidence to prove which of them gave the fatal blow, nevertheless it is to be presumed that each of them lent assistance in the murder, and are therefore equally culpable in the eye of the law.

* No. 13, Ramsoondar Gope.
,, 14, Jadoo Chassin
,, 15, Sukhee Chassin.

Having given my serious attention to the whole of the circumstances attending the murder of this unfortunate woman, I consider the prisoners have justly forfeited their lives by having deprived a fellow-being of hers; nevertheless I am inclined to suppose that the prisoners did not meet for the purpose of committing the murder, rather that they with others had as-

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Case of NITTAE DASS BYRAGEE and others.

sembled at the house of Teloke, a prostitute, who allowed nightly orgies to take place at her residence, being irritated by some acts or words of the deceased, assaulted her, and finding they had committed murder, endeavoured to conceal the body by throwing it into the *nullah*, where it was found. Under this impression, I would recommend that the three prisoners should be imprisoned with labor and irons in banishment for the period of twelve (12) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) After hearing the proceedings in this case, we find it quite impossible to place any reliance on the witnesses referred to in the 3rd paragraph of the judge's letter. As stated by him, they depose to circumstances which, if true, are sufficient to implicate the prisoners as accomplices in murder, but the case stands entirely on the credit due to their statements which, under the circumstances we are about to allude to, are open to question, the murder (for doubtless the woman died a violent death) is said to have occurred on the 14th of July. On the 17th, the police reached the spot to make inquiries, they soon afterwards reported that the neighbours appeared unable to account for the woman's death, merely stating their suspicions in a general way that some one or other of those in the habit of visiting the deceased must have killed her, but affording no clue whatever to the perpetrators of the crime, nevertheless some persons were apprehended, and on the 22nd, six days after the police had been at work, the witnesses alluded to, gave their evidence, these three persons are members of a family consisting of themselves and a brother named Ramdhun Gope, who lives next door to the deceased, and must, it is natural to suppose, have been questioned by the police when making the report to the magistrate that the neighbours could give no clue to the discovery of the criminals; it is therefore most unaccountable to find these parties, able and willing to give such important testimony, withholding it for so many days from the darogah's notice. It is also strange that Ramdhun, who is mentioned by them as being with them, and present on the night in question, in no respect corroborates a word of their story, there is too much reason to think the depositions on record may have been got up by the police, and we reject them accordingly.

It is not unlikely that the prisoners were present at the deceased's house, on the night she met her death, but setting aside the testimony of the witnesses referred to, there is nothing to connect that solitary fact with the crime charged against them, as there is nothing to show when and with what object the murder was committed. Considering the proof against the prisoners too unsatisfactory for conviction, we direct their release.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

SHEIKH BECHOO AND GOVERNMENT

versus

Mymensingh.

ANWUR KHAN (No. 1,) ZUMEER KHAN (No. 2, APPELLANTS,) GORAWUR KHAN (No. 3,) AND SHEIKH SHORUF KHOLIFA (No. 4.)

1854.

October 26.

Case of ANWUR KHAN and ZUMEER KHAN, appellants, & others.

The sessions judge was informed that the sentence passed upon one of the prisoners was too light. Appeal rejected.

CRIME CHARGED.—1st count, No. 1, wilful murder of Bulleear Khan; 2nd count, being an accomplice in the wounding of Afzul; Nos. 2 and 3, 1st count, being accomplices in the above 1st count, 2nd count wounding Afzul; and No. 4, 1st count, being an accomplice in the above murder and wounding; 2nd count, ordering the above murder and wounding.

CRIME ESTABLISHED.—No. 1, culpable homicide, and Nos. 2, 3 and 4, being accomplices in the same.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 5th August, 1854.

Remarks by the sessions judge.—It was alleged that Sheikh Sobhanee, father of prisoner No. 4, having taken lease of a *jote*, which belonged to his brother, one Assanoollah, there was a dispute between the parties regarding the same. It appears from the record of commitment, and the evidence taken on the trial, that on the 11th Bysack, corresponding with the 23rd April last, the prosecutor, Bechoo, witness No. 1, Afzul and the deceased, Bulleear Khan, were employed by Assanoollah in cutting the *dhan* that stood in the field, appertaining to the *jote*, and as they were carrying it to his house, prisoner No. 4, accompanied by the other prisoners and others, opposed them in the way, and attempted to take the bundles to his own house, upon this a scuffle ensued between the parties, and on No. 4 ordering his people to beat the other party, No. 1 inflicted a spear wound on the left side of the deceased, who immediately fell down and died, and as witness No. 1 called out that Bulleear Khan had been killed, prisoners Nos. 2 and 3 wounded him and the prosecutor also, and the latter ran away. The civil assistant surgeon deposed that deceased's death was caused by a penetrating wound on the left side of the chest passing through the lungs, wounding the heart, which must have been inflicted with a long pointed instrument, and that such a wound must have been followed by almost immediate death. The prisoners one and all pleaded *not guilty* throughout, and resorted to *alibi* and enmity with the adverse party for their defence. The evidence of the witnesses

examined on their behalf however was insufficient to establish the pleas set up in defence, or exculpate them from the charge, while some of them denied all knowledge of the points on which they were cited. The *futwa* of the law officer found prisoner No. 1 guilty of culpable homicide, and the others of being accomplices in the same, a verdict in which I concurred.

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Case of ANWURKHAN and ZUMKEER KHAN, appellants, & others.

Sentence passed by the lower court.—No. 1 to be imprisoned with labor and irons for seven (7) years, and Nos. 2, 3 and 4, each to four (4) years' imprisonment without irons, and to pay a fine of 50 Rs. on or before the 5th September, 1854, or in default of payment, to labor until the fine be paid, or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. B. J. Colvin.) We see no reason to interfere with the conviction in this case, but we think that the sentence passed by the sessions judge upon prisoner No. 1 is much too light. We cannot however, with reference to the law, enhance it. It is proved that he came out armed with a *soolfee*, which he at once struck deceased with, so fatally, that his instantaneous death, the heart having been penetrated, ensued. This case should, in our opinion, have been referred for the Court's orders, as requiring a sentence upon prisoner No. 1, beyond the sessions judge's power to pass. We reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

MUSST. PROBA, (No. 3,) JADUB MALLEE (No. 4,) MUSST. BOCHUN MALLEENEE (No. 5,) MUSST. PUDDO (No. 6, APPELLANT,) AND MUSST. ROBO (No. 7.)

Sylhet.

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Case of MUSST. PUDDO and others.

CRIME CHARGED.—1st charge, wilful murder of Musst. Nirma; 2nd charge, culpable homicide of Musst. Nirma, by administering and causing to be administered, drugs to produce abortion; 3rd charge, being accomplices in the crimes charged in the 1st and 2nd counts.

CRIME ESTABLISHED.—No. 3, culpable homicide of Musst. Nirma, and Nos. 4, 5, 6 and 7, being accomplices in the culpable homicide of Musst. Nirma.

Appeal rejected, prisoner's guilty knowledge being apparent.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 26th August, 1854.

Remarks by the sessions judge.—There is scarcely any evidence against the prisoners, except that of their own confessions,

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which are proved to have been voluntarily made before the darogah and repeated to the magistrate.

The deceased came to the village of the prosecutor and died two days afterwards, and he gave notice of her death at the thannah, and on inquiry it was proved that she had had a miscarriage and the deposition of Huree Mallee, witness No. 1, led to the apprehension of the prisoners.

The prisoner, No. 3, admits that she administered medicine to the deceased, through the hands of Jadub, prisoner No. 4, with the view of procuring a miscarriage, but that death ensued.

The prisoner, No. 4, admits that he took measures for procuring medicine to procure abortion, but he says prisoner, No. 3, administered them, he being present. The prisoner, No. 5, admits that she was present when Proba took measures to procure the abortion, but she took no active part.

The prisoner, No. 6, admits that she procured certain medicines from the prisoner, No. 3, and took her to the house of the deceased.

Prisoner, No. 7, states that the deceased consented to give ten annas to the prisoner, No. 3, to produce abortion, that she, prisoner, No. 7, went to the deceased, and brought her to the prisoner, No. 3, and spoke of her skill.

It was proved in evidence, that the prisoner was with child by her husband's brother, and that she died after a miscarriage caused by drugs.

I have sentenced Musst. Bochun to a lesser punishment than the other prisoners, as she was a mere passive observer of what was going on, she took no steps to defeat the object of the other prisoners, however, and was clearly consenting to the deed.

Sentence passed by the lower court.—No. 3, to five years' imprisonment with labor suited to her sex, No. 4, to be imprisoned without irons for (3) years and to pay a fine of (20) Rs., on or before the 5th proximo, or in default of payment to labor, until the fine be paid, or the term of his sentence expire. No. 5, to be imprisoned for (6) months and to pay a fine of (10) Rs. on or before the 5th proximo, or in default of payment to labor until the fine be paid or the term of her sentence expire, and Nos. 6 and 7, to be imprisoned for (3) years and to pay a fine of (20) Rs. each, on or before the 5th proximo, or in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. B. J. Colvin.) Musst. Puddo has appealed. In her petition of appeal, she has stated that she, at the bidding of No. 3, pulled up the root, which was used medicinally, but without knowing the purpose for which it was wanted. In her mofussil confession and in that before the magistrate, however, she allowed that she knew the object to be to procure abortion. We therefore reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

RUSSOOL MAHOMED (No. 7,) POOSOORAM (No. 8,) NETAI (No. 9, APPELLANT) AND FUKEERCHAND (No. 10, APPELLANT.)

Rungpore.

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Case of NETAI and others.

The prisoners were acquitted, the evidence to their recognition being suspicious, and there being no corroboration of their mofussil confessions.

CRIME CHARGED.—1st count, dacoity in the house of Kisto Dass and plunder therefrom of property value at Rs. 71-12, with wounding of the said Kisto Dass; 2nd count, No. 7, is also charged with receiving and having in his possession property, knowing the same to have been obtained by the said dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 14th June, 1854.

Remarks by the officiating sessions judge—On the night of the 25th February last, the house of witness, No. 1, was entered by eight or ten dacoits with torches, *lattees*, &c., who seized him and his brother, preventing the former seeing who they were, broke open a chest and carried off property to the value of Rs. 71-12. On their departure, prisoner, No. 7, Russool Mahomed, being somewhat behind the others, was observed by witness, No. 1, who grappled with him and called for aid, which was immediately rendered by his brother, witness No. 2, who had begun to follow the dacoits, and by witness, No. 3, soon followed by witnesses, Nos. 4 and 5, and he was secured and taken to the house of witness No. 1, where he acknowledged that he had come for the purpose of committing a dacoity and named his companions, among whom were prisoners, No. 8, Poosooram, No. 9, Netai, and No. 10, Fukeerchand; next morning the chowkeedar, witness No. 18, reported the matter at the thannah, stating in his deposition taken at the time, that prisoner, No. 7, had been captured and had confessed and named his companions with many other particulars, of which he, the chowkeedar, only recollected that one Gokool (not committed) had been named and that the dacoits had assembled in the house of Netai, prisoner No. 9. On the police going to the spot, prisoner, No. 7, again confessed, inculpating prisoners, Nos. 8, 9 and 10, and he repeated his confession before the magistrate. The houses of the parties named by him were searched, without success, but the prisoners, Nos. 8, 9 and 10, confessed in the mofussil and No. 8 adhered to his confession before the magistrate, while Nos. 9 and

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10 repeated theirs. Witness, No. 1, deposed in the mofussil that he recognised No. 9, alone, and that by his voice at the time of the dacoity. In the foujdary court he named also No. 8 and others as recognised by him. Witness No. 2, said in the mofussil that he had recognised Nos. 9 and 10, by the torch-light, here he says Nos. 8 and 9, by their voices, their evidence consequently cannot be trusted on the point of recognition. Witness No. 3, has been consistent in alleging his recognition by the torch-light of prisoners, Nos. 9 and 10, Netai and Fukeer-chand, as he met them when on hearing the noise he was running towards witness No. 1's house. In the mofussil and foujdary, he named a third person also, who had not been committed.

The apprehension of Russool Mahomed, immediately after the dacoity, and his confession there are fully proved by witnesses, Nos. 1, 2, 3, 4, 5, 8, 18 and 19, and the mofussil confessions of all the prisoners and those at the foujdary of Nos. 7 and 8 are duly proved.

All the prisoners at the sessions denied the charge, alleging enmity between the *jotedars* under whom witness No. 1 and they respectively hold, and that their confessions were extorted, the enmity alleged appears to have existed, but affords no ground for disbelieving the evidence. One witness, No. 24, asserts that he saw a burkundaz strike prisoner No. 8, and tell him to confess.

Russool Mahomed, prisoner No. 7, declares that he was stupified with *ganjah* and knew not what he was saying before the magistrate, that he had been to the market and was returning past witness No. 1's house, where that witness and others seized him. The improbability of this story is greatly increased by the circumstance that he was not known to the parties who seized him, having settled in the village from which he came to commit the dacoity only about six months before, as proved by his own witnesses, Nos. 20, 22 and 23.

No. 8, Poosooram, alleges that he made his foujdary confession under the fear and prompting of a burkundaz, who was close to him all the time. This is disproved by the witnesses to his confession Nos. 16 and 17, who, although not specially asked regarding the burkundaz, depose that prisoner's confession was free and uninfluenced. The details in his confession, and his answers to questions are also inconsistent with the idea of their being prompted or extorted.

A good character is given to prisoners, Nos. 8, 9 and 10, by their witnesses.

To recapitulate, against Russool Mahomed, No. 7, there is the proof of his capture and confession at the time of the dacoity, and his confessions afterwards to the police and magistrate.

Against Poosooram, No. 8, his being named by No. 7, his apprehension in consequence and his confessions to the police and magistrate.

Against Netai, No. 9, and Fulkeerchand, No. 10, there is their recognition at the time by witness No. 3, the truth of whose testimony is corroborated by their own confessions in the mofussil by the confessions of Nos. 7 and 8, in the mofussil and foujdary.

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Case of NETAI and others

I convicted all the prisoners and sentenced them as mentioned. I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. B. J. Colvin.) The prisoners Nos. 9 and 10, only appealed; we are not satisfied with the proof upon which the sessions judge relies. The witness Khugessur was not examined before the police on the point of *recognition* of the prisoners till the 1st March, the dacoity took place on the night of the 25th February, and though Khugessur was present at the search of the houses of the prisoners on the *27th February*, he was then silent as to having recognised them in the act. Although they were named on the spot by a prisoner No. 7, who has not appealed, and they themselves confessed in the mofussil, still such a confession unsupported by good evidence is not in our judgment sufficient for a conviction. We acquit and release them.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT AND RAMMONEY

versus

JUGGERNATH BURNICK (No. 1,) RAMDOSS DOSS (No. 2,) KASHEENATH BURNICK (No. 3,) RAMJOY DOSS BHOOYEAH (No. 4,) AND RAMJOY DOSS (No. 5, APPELLANT.)

Tipperah.

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Case of RAMJOY DOSS and others.

CRIME CHARGED.—Nos. 1 to 4, wilful murder of prosecutor's brother Ramkannye Burnick, No. 5, being accessary after the fact to the above murder.

CRIME ESTABLISHED.—Nos. 1 to 4, culpable homicide of Ramkannye Burnick brother of the prosecutor, No. 5, accessary after the fact to the above homicide.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

In a case of culpable homicide one prisoner convict-

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ed as an accessary after the fact appealed. His guilt being established by his own confessions, the appeal was rejected.

Remarks by the officiating sessions judge.—The prosecutor in this case lives in the village of Sonahpoore in thannah Ameergong. On the night of the 28th of Assaur, 1261, B. S. he was informed by his brother, the deceased Ramkannye, that he was about to go on some business to the house of Phezooram Dhoobee, one of his neighbours. The next morning when he rose he missed his brother from his usual place, but supposed that he had gone, as he had said he would, to the Dhoobee's house. The prosecutor then himself went to a *haut* at some distance. He did not return home until the Thursday evening, when he was much alarmed by hearing from his sister, Chunder Kullah, that no news had been heard of their brother since he had left home last.

His inquiries about his brother proving fruitless, he informed the village chowkeedar of the matter and went with him to the Ameergong thannah, where he stated his suspicion that his brother had been made away with by the first four prisoners, who, he well knew, were bitter enemies of his brother.

The parties were thereon arrested, when prisoners, Juggernath No. 1, and Ramdoss No. 2, confessed that they had beaten and kicked the deceased, and that he had died under their hands from the ill-treatment he had received.

As their confessions involved the 5th prisoner Ramjoy Doss, as an accessary after the fact, he also was arrested, and acknowledged his having been aware of the deed, and having afterwards assisted the other four prisoners to conceal the body. The information supplied by him ultimately led to the discovery of the body, which was found lying under a tree in a spot near the house of a man named Rampershad living in mouzah Kollessur. The finding of the body not taking place until twelve days after the man's death, little more than a skeleton remained. The deceased was a man in the prime of life, about twenty-seven or twenty-eight years, and was in perfect health at the time of his disappearance.

Before the magistrate prisoners, Juggernath No. 1, Ramdoss No. 2, and Ramjoy Doss No. 5, repeated their confessions.

At the sessions, all the prisoners pleaded *not* guilty.

The evidence of four persons, who were witnesses to the fact, clearly proved the main charges against the prisoners. Three women, witnesses Nos. 1 to 3, living in the same village with the prisoners, and who themselves occupied the same *baree*, depose distinctly to having witnessed the assault by the four prisoners upon the deceased, who was thrown down by them and beaten and kicked when in that position. This occurred about midnight of the same day on which deceased had left his house, in the manner detailed above. The night was a moonlight one, and they could see clearly what passed. The women screamed out on seeing what happened, when the prisoners

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abused and threatened them, compelling them to silence. The four prisoners then took up the body, which the eye-witnesses all state being heavy like that of a dead person, and carried it off in an easterly direction towards the hills. These witnesses state further, that Gooroodoss Doss, witness No. 4, the brother of the prisoner Ramdoss (No. 2,) came up to where the prisoners were standing, after the assault, and spoke to the prisoners. This man was ultimately directed by the joint-magistrate to be retained as a witness, as his evidence was most necessary for the elucidation of the case. In his evidence he states, that he had seen the prisoners in consultation together, and had heard from his brother, prisoner Ramdoss Doss (No. 2,) that they had been consulting about their design to kill the deceased. The woman Somittra, cousin of the above witness, and who lives in the same house with him and prisoner Ramdoss Doss (No. 2,) states in her evidence that on the day in question, she saw the prisoner Juggernath take Ramdoss Doss (prisoner No. 2,) aside and speak to him in private, as if in consultation. Labonee Doss, another witness (No. 20,) residing in mouzah Kollessur, states that he found a body lying in the paddy field belonging to him, and that he and his neighbours Ramgopaul and Rampershad (witnesses Nos. 21 and 22,) recognized it as being the body of Ramkannye, whom they had known previously. Afraid of being drawn into some trouble from the body being found near their dwellings, they aided Labonee Doss (witness No. 20,) to remove the body from where it was found by them, to the spot where it was afterwards, on their information, found by the police. The spot where the body was found by these witnesses, being that where it was first thrown by the prisoners, was about two *coss* from the house of the deceased, and the place where it subsequently was discovered, on the information by the police, was about half a mile further off.

That there had been enmity for some time past, between the first four prisoners and the deceased, is clearly proved by the evidence of several witnesses. The prisoner Ramjoy Doss (No. 4,) had an illicit connexion with the sister of the deceased, who had had a quarrel with him on that account, and had beaten him. The deceased had also quarrelled and fought with Kasheenath (prisoner No. 3,) with whom he had a disagreement about his not affording proper support to his (deceased's) niece, the woman Jyekallee, who was married to Kasheenath's brother Ooma Kanth, then absent at Akyab. It further appears that the deceased had an intrigue with the woman Razee, the wife of a man named Ramdoss Potdar. This woman had afterwards for her lover, the prisoner Juggernath, so that, *that* person also nourished ill-will toward him. The fourth prisoner, Ramjoy Doss Bhooyeah, had carried on an intrigue with the deceased's sister, Chunder Kullah, and there was ill-will between them on that account.

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A neighbour of the prisoners named Komul Doss, produced a *tauveez* or armlet given to him by the prisoner Ram Doss two or three days before the arrival of the darogah to investigate the case. He had been requested by the prisoner to keep it for him. This *tauveez* was recognized and sworn to by two witnesses, as well as by the prosecutor, as being the property of the deceased Ramkannye.

The confessions of the prisoners Juggernath Burnick, (No. 1,) Ramdoss Doss, (No. 2,) and Kasheenath Burnick, (No. 3,) are attested by the witnesses, in whose presence they were taken in the mofussil and before the magistrate.

Of the manner in which the deceased met his death, there can exist no doubt whatever. The confession of three prisoners, as well as the positive and direct evidence of eye-witnesses sufficiently attest the fact, but nothing elicited in the case can sustain a charge of wilful murder against the prisoners. Some weight may be attached to the circumstance of the consultation of the prisoners before hand as showing malice aforethought, and, as stated by one witness, Gooroodoss Doss, (No. 4,) a deliberate design to put him to death, but this man's evidence goes no further than that he had *heard* from his brother Ramdoss Doss, (prisoner No. 2,) that the other prisoners had designed to kill the deceased and had wished him to join them. This even if admitted to be true, would not affect the other prisoners, being only the allegation at second hand of one of them. The confessing prisoners, Juggernath Burnick, (No. 1,) and Ramdoss Doss, (No. 2,) make no mention of their having entertained any further designs against the deceased than to give him a beating; and this assertion is supported by the facts, for, had the prisoners really cherished the intention of putting him to death, they would have used very different means to effect their purpose, than what their own avowal and the evidence of the eye-witnesses show that they actually employed. No weapons of any kind were used; which would certainly not have been the case had they designed to murder the man, and all the evidence tends to show that they intended to effect nothing more than what some of themselves allege, viz., to inflict a beating upon a man towards whom they bore a grudge and jealousy. In this, as in many other similar cases, the result went further than what was ever designed or contemplated by the actors.

In concurrence with the *futwa* of the law officer, who held that the act of the prisoners amounted to culpable homicide, I sentenced Juggernath Burnick, (No. 1,) Ramdoss Doss, (No. 2,) Kasheenath Burnick, (No. 3,) and Ramjoydoss Bhooyeah (No. 4,) as principals, to five years' imprisonment with labor in irons, and Ramjoy Doss (prisoner No. 5,) as an accessary after the fact, to three years' imprisonment, and to pay a fine of 30 Rs., otherwise to labor until the expiry of the term of his sentence, or until payment of the fine.

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Case of RAMJOY DOSS and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The only prisoner who has appealed from the sentence passed by the sessions judge is Ramjoy Doss, No. 5, convicted of being an accessary after the fact to culpable homicide.

This prisoner had assisted the principal offenders in concealing the body, and made a statement to that effect before the police on his apprehension. This was repeated by him in the presence of witnesses shortly afterwards, and on his appearance before the magistrate he again confessed. No doubt can be entertained of the truth and genuineness of his admissions, for he has allowed in his appeal that they were voluntarily made in the hope of being admitted as a witness, and as the purport of his statements is sufficient to convict him of having aided the principal offenders in concealing the body of a man whose death he believed had been caused by violence, we see no reason to interfere with the conviction and sentence. This appeal is therefore rejected.

PRESENT:

B. J. COLVIN, Esq., *Judge.*

GOVERNMENT AND DOORGADOSS

versus

SHAMA MUSSULMAN.

24-Pergunnahs.

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Case of SHAMA MUSSULMAN.

The prisoner's appeal was rejected, the pleas urged in it being groundless.

CRIME CHARGED.—1st count, dacoity and plunder of property to the value of Co.'s Rs. 125-7; 2nd count, having in his possession part of the plundered property knowing it to have been acquired by dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 12th July, 1854.

Remarks by the officiating additional sessions judge.—A dacoity was committed in the house of the prosecutor on the night of the 27th April, 1854, and property to the value of 125 Rs. carried off. The robbers broke into the house about midnight with lighted torches. Six persons variously armed entered and began to force open the trunks and boxes with hatchets. Some stripped the women and children of the ornaments they had on, after which they departed. The villagers collected and made after the dacoits, when the prisoner was confronted by the chowkeedar of the village, knocked down and secured with certain

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articles of the plundered property, a *ghurra* and two *tusseelas*. Some property was also found in a plantain garden, thrown there and abandoned by the dacoits in their flight. The prisoner when taken before the police confessed that he had taken part in the dacoity, and the property found with him proved to be part of the plunder. He denied the charge before this court, and pleaded an unlawful arrest, but could adduce no proof of the plea. Some of the witnesses he called to character stated that he bore a good character and worked for his livelihood.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner's story, that he was coming to Calcutta early in the morning with tape to sell when he was seized by the chowkeedar, is very improbable. In his petition of appeal too he has stated that he confessed at the thannah from ill-treatment and being kept without food for three days; but these alleged circumstances are disproved by the record, which shews that he was sent on the very day of his apprehension, viz., 28th April to the magistrate, who took his answer on the following day, when the effects of any ill-treatment, if really practised, would have been visible. I reject the appeal.

PRESENT:

H. T. RAIKES, ESQ., *Judge, and*

J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

TUJUMUDDY (No. 1,) AND HYDER ALLY (No. 2.)

Tipperah.

1854.

October 27.

Case of TUJUMUDDY and another.

Conviction and sentence passed by the sessions judge in a case of wilful perjury, upheld in appeal.

CRIME CHARGED.—No. 1, perjury in having on the 27th April, 1854, corresponding with 15th Bysack, 1261, B. S. deposed under a solemn declaration taken instead of an oath, before the officiating joint-magistrate of Noacolly in a case in which Hyder Ally was plaintiff, that "on the 18th Chyte last, about four *dunds* before night whilst returning from Chundiah's hât he saw Tujumuddy, and Dorap, and Hyder Ally, and Imamuddy, and Azeemuddin assaulting the plaintiff with blows at the instigation of Sumiruddy and Mofeezuddy," such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case. No. 2, 1st count, perjury in having on the 27th April, 1854, corresponding with the 15th of Bysack, 1261, B. S. deposed under a solemn declara-

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Case of TUJUMUDDY and another.

tion taken instead of an oath, before the officiating joint-magistrate of Noacolly, that "on Thursday the 18th of Chyte, four *dunds* before night, he was feeding cattle to the north of his house, Mofeezuddy, Tujumuddy, and Sumiruddy, and Dorap, Azeemuddin and Imamuddy, and Hyder Ally, and about others ten or twelve men, inhabitants of Nuldugee, Motilal, came and by order of Sumiruddy and Mofeezuddy all the other defendants assaulted him, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, subornation of perjury in causing Tujumuddy, prisoner No. 1, to give the abovementioned false evidence.

CRIME ESTABLISHED.—Wilful perjury.

Committing Officer.—Mr. F. B. Simpson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—On the 27th April last, the prisoner Tujumuddy gave evidence in the court of the joint-magistrate of Noacolly, in a case brought by the other prisoner, Hyder Ally, (No. 2,) against a man named Sumiruddy and others for assault, &c. In the capacity of witness, he swore positively to having been present at the time and place where the assault was alleged to have occurred, viz. on the 18th Chyte, corresponding with the 30th March, at a village in Dukhin Shahbazpore, and that he had witnessed the whole affair complained of.

It appeared, however, that this very man Tujumuddy had appeared as a witness in another case of petty assault, in which a man Imamuddy was plaintiff, and gave evidence therein in the joint-magistrate's court on the 17th Chyte, or 29th March. Now as it was absolutely impossible that the prisoner could have been present on the occurrence of the first assault which occurred, or was stated to have occurred, on the 18th Chyte, at a place more than two days' journey from the joint-magistrate's court, where it is certain that he had delivered his evidence in the other case on the 17th Chyte or just one day before, the prisoner must have been guilty of flagrant perjury in the first instance.

The prisoner confessed in his answer, both before the joint-magistrate and at the sessions, that he had given false evidence in the first case, having been tutored to say by others what he had given as evidence in Hyder Ally's case.

Hyder Ally pleaded *not guilty*.

As to the guilt of the first prisoner, Tujumuddy, there can be no doubt. He admits having given false evidence, and independent of his confession, the circumstances of the case are too clearly against him to admit of any denial availing him. With

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reference to the other prisoner, Hyder Ally, the fact of his being guilty of subornation of perjury, is no less clear. The only person to be benefited by the proving of the assault case was himself, the other prisoner having no interest in the matter, so that it is clear that he must have appeared and delivered evidence on the inducement of another, and that other, the plaintiff in the case.

By the evidence of Bonah Gazi peadah (No. 4,) and Issur Chunder Mitter, Nazir Buxshee, it is clearly proved that Hyder Ally had set down Tujumuddy as one of his witnesses, and had caused him to be *subpœnaed* as such. He accompanied the peadah into the mofussil and pointed out to him the man, Tujumuddy, as the witness whose evidence he required, and accompanied him to the Nizarut.

When the case came on before the joint-magistrate, Hyder Ally declared Tujumuddy to be one of his witnesses; and it is proved by the deposition-writer that the evidence of Tujumuddy was taken down in court, in the hearing and in the presence of the plaintiff, Hyder Ally. All the above facts, with reference to both prisoners, were fully proved by the examination of the papers of the assault cases, and from the inspection of the Nazir's book.

In conformity with the *futwa* of the law officer, who declared that perjury had been fully established against Tujumuddy, and subornation of perjury against Hyder Ally, I sentenced both prisoners to be imprisoned with hard labor in irons for a period of (5) five years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner Tujumuddy has been convicted of perjury, and the prisoner Hyder Ally of suborning him as a witness in his own behalf. We see no reason to interfere with these convictions, the prisoner Tujumuddy has admitted, from the first, that he gave false evidence in Hyder's case at the instigation of others, and the only defence set up by Hyder has been that he heard that a man of the name of the other prisoner had witnessed the assault made upon himself, and had questioned the prisoner as to his knowledge of that matter and summoned him as able to support his charge in consequence, but that three men of the same name resided in the village where the prisoner Tujumuddy lived, and he may have summoned the wrong person. This defence cannot be received in the face of the fact that the prisoner Tujumuddy actually gave the evidence required of him by Hyder, which sufficiently points him out to be the individual sought by Hyder, and as we consider the reasoning of the sessions judge is fully justified by the facts before him, which warrant a strong presumption of the prisoner's guilt, we reject the appeal and confirm the sentences on both prisoners.

PRESENT:

H. T. RAIKES, Esq., *Judge, and*
J. H. PATTON, Esq., *Officiating Judge.*

ACKBUR BHOOYA AND LOCHUN SOOTHAR,

versus

NUBOOLLAH.

Tipperah.

1854.

October 27.

Case of NUBOOLLAH.

The prisoner, an old offender, was convicted of cattle-stealing and sentenced to five years' imprisonment.

Appeal rejected.

CRIME CHARGED.—1st count, stealing two cows, valued 26 Rs., viz., one belonging to the prosecutor, Ackbur Bhooya, valued 12 Rs. and another belonging to the prosecutor, Lochun Soothar, valued 14 Rs.; 2nd count, knowingly keeping in his possession the above stolen cattle.

CRIME ESTABLISHED.—Stealing two cows, valued at 26 Rs. belonging to the prosecutors.

Committing Officer.—Mr. J. W. Dalrymple, joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah.

Remarks by the officiating sessions judge.—The prisoner is charged 1st, with stealing two cows, one valued 12 Rs. the property of Ackbur, and the other valued 14 Rs. belonging to Lochun; 2ndly, with keeping the same in his possession knowing them to have been stolen.

The circumstances of this case are as follow: The 1st prosecutor, Ackbur, who lives in mouzah Culchosali, pergunnah Konchunpore, is owner of several cows, all of which he had fastened up in the cow-house on the evening of the 23rd June, corresponding with the 10th Assar, before last. In the morning when he went to look at the cattle, he found that one of them was missing, the rest being all safe as he had left them the evening before. Shortly after this he heard that his neighbour Lochun, the other prosecutor, had also had one of his cows stolen on the very same night that he had lost his own. Both the owners searched in every direction, but could find no traces of the missing cattle. When thus engaged, the prosecutor Ackbur happened to meet a man named Mohurrum peadah, from whom he received the intelligence that a person by name Nuboollah, residing in Dukhin Raepore had recently been convicted and sentenced to imprisonment for cattle-stealing, and that as he knew the culprit still to have several other cows at his place of abode, he suggested the probability of one or more of these being the stolen property in question, and advised him to go to Dukhin Raepore, and ascertain the fact for himself. On arriving at the prisoner's house, the prosecutor found the servant of the prisoner by name Thakooree, driving out some cows to pas-

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ture, and he immediately recognized his own as well as his neighbour Lochun's missing cows among the number. Lochun, also, on receiving this intelligence proceeded to the spot and recognized and claimed his own missing property. The mother and servants of the prisoner on being questioned declared that they had been purchased by him, but they neither stated when, nor from whom, nor for what price they had been bought, nor is their statement borne out by any witnesses. The story of both prosecutors is fully substantiated in every particular by the two neighbours, whom Ackbur took with him, when he went to search at the prisoner's abode. The cattle were also proved to be the plaintiffs' property. The witnesses all state what is, indeed, otherwise sufficiently proved, that the prisoner is a notoriously bad character, and well known as such in his own neighbourhood.

He had been since the month of August, subsequent to the occurrence of the theft, in the instance abovementioned, actually undergoing a sentence of imprisonment for cattle-stealing in another case, and had also been once before sentenced to a year's imprisonment for a similar offence.

The prisoner pleaded *not guilty*, and stated that he had purchased the two cows from the prosecutors at different times, and further declared that he had four witnesses to prove the fact. The first witness brought forward, however, denying all knowledge of the transaction, the prisoner declined offering any further evidence.

The *futwa* of the law officer declared the charge fully proved against the prisoner, and in concurrence with the same, I sentenced him to five years' imprisonment, with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) It is proved and admitted by the prisoner that the cows were in his possession, and this fact, coupled with his inability to prove his statement that he purchased the cows from the prosecutors, affords every reasonable presumption of his guilt.

We see no reason to interfere with the conviction and reject this appeal.

PRESENT:

B. J. COLVIN, ESQ., *Judge.*

GOVERNMENT AND SHEIKH GHOLAM NUBBEE, &c.

versus

SHEIKH KHOAUJ.

Dacca.

1854.

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Case of SHEIKH KHOAUJ.

The appeal of the prisoner was rejected, the proof of his guilt being satisfactory.

CRIME CHARGED.—Assembling in an armed body and attacking and plundering at night the houses of the prosecutors, and carrying off by force Nyah Beebee *alias* Bengalee Khatoon and Teeun Beebee and Hingun Beebee and the boy, Fyzoo.

CRIME ESTABLISHED.—Assembling in an armed body and attacking and plundering the houses of the prosecutors and carrying off by force Nyah Beebee *alias* Bengalee Khatoon and others.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 14th August, 1854.

Remarks by the sessions judge.—This case was originally tried in this zillah, and on the 17th May last, the sudder Court sentenced the prisoners then convicted. The prisoner has since been apprehended.

Witnesses* proved that he had taken part in the attack on the houses of the prosecutors. The prisoner pleaded an *alibi*, but nothing was established in his favor by the witnesses he called.

* Nos. 1, 3 and 4.

The law officer convicted the prisoner of the crime charged in the calendar.

I concurred in the verdict and pronounced the same sentence as that passed on the prisoners formerly convicted.

Sentence passed by the lower court.—To be imprisoned for the period of seven (7) years with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The particulars of the former trial will be found at page 587 of the Nizamut Report for May last.

The prisoner was mentioned by the witnesses from the first and before his apprehension. He was a servant of Jumalunlyle, the principal in the outrage. Seeing no reason to interfere with the conviction or sentence, I reject the appeal.

PRESENT:
H. T. RAIKES, ESQ., *Judge, and*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT AND SHUNKER CHUNG
versus
RAMNARAIN CHUNG.

Mymensingh.

1854.

October 27.

Case of RAMNARAIN CHUNG.

Prisoner convicted of the culpable homicide of his wife, but the fatal blow having been struck without any serious intent to injure, punishment reduced to one year's imprisonment in appeal.

CRIME CHARGED.—Wilful murder of Doorga Chundalnee.
CRIME ESTABLISHED.—Culpable homicide.
Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.
Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 21st July, 1854.

Remarks by the sessions judge.—From the admission of the prisoner and the statement of the witnesses, it appears that on the night of the occurrence, as the prisoner and his cousin, witness No. 1, were at their evening meal, he observed that there was too much salt in one of the dishes, and he became enraged, and as his wife, the deceased, was stooping down to serve him, he gave her a severe blow with his left hand on the right side of her temple, which immediately knocked her down, and she became senseless and died shortly afterwards, notwithstanding endeavours were made by him, and witness No. 2, a relation to revive her. The deceased was a young woman of eleven years of age and had been sometime before unwell with fever, and though she recovered, she was in a weak state, but that no ill-feeling existed between them as before. The civil assistant surgeon was unable to examine the corpse from the advanced state of decomposition, but he stated the effusion might have existed on the brain, though he could not observe it, or that the state of the brain might have been produced from fever, rendering it easily disorganized by a slight concussion; in such a case a severe blow with the open hand might have produced a fatal effect. The prisoner throughout admitted having struck his wife in the manner described, and offered no defence. The *futwa* of the law officer convicted him of culpable homicide, in which I concurred.

Sentence passed by the lower court.—Sentenced to be imprisoned without irons for the period of four years, and to pay a fine of 30 Rs. on or before the 21st August, 1854, on default of payment to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner admits the crime and makes no defence. Taking the case as stated by the judge on his remarks on the trial, we find that the blow, which accidentally proved fatal, was given without any intent on the part of the prisoner to seriously injure his wife. Although concurring in the conviction, we think the sentence of four years with fine passed on the prisoner is, under the circumstances, excessive and reduce it to one year's simple imprisonment.

PRESENT:
SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT
versus
MUSST. KAOOTANEE.

Rungpore.

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Case of MUSSUMUT KAOOTANEE.

The prisoner was acquitted, notwithstanding her alleged confessions, the statements contained in them differing, and there being no proof which story was true, while there was no evidence of her guilt.

CRIME CHARGED.—1st count, wilful murder of Kandooree, her daughter; 2nd count, being present, aiding and abetting the above crime; 3rd count, aiding and abetting in the suicide of Musst. Panbee; 4th count, attempt to commit suicide.

Committing Officer.—Mr. A. W. Russell, magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 19th September, 1854.

Remarks by the sessions judge.—About midnight of the 20th June last, Hasil, witness No. 9, awoke and missing his wife and child, who had gone to sleep on the same mat with him, called out to his brother, Kashee, witness No. 11, who was in an adjoining hut, Kashee awoke and missed his wife also. In the morning search was made, but without effect till Haooreea, witness No. 13, came and told Hasil that his wife, Kaootanee, the prisoner was in informant's house, having come there during the night with the clothes dripping wet, saying she had run away on account of being beaten. Hasil went and fetched her, and on asking what had become of their child, Kandooree, and of Kashee's wife, Panbee, she said they had gone out together, Panbee carrying the child, and in the dark she had missed them and gone on herself to Haooreea's house. Soon after this, a body was seen by witnesses, Nos. 2 and 4, in a tank, two hundred and fifty or three hundred yards from Hasil's house, which was recognized to be that of Panbee, and the child's body was also found. No further measures were taken for their preservation. Notice however was sent to the thannah, the darogah came out on the following day, and next day he took the deposition on solemn affirmation of Kaootanee, upon whom, it would appear, suspicion had not hitherto rested. In consequence of her statement, he at once took her confession as a prisoner. This confession is much less in detail than the deposition, but the main facts are distinctly stated and agree with her subsequent confession to the magistrate. The following is an abstract of these confessions. Her husband treated her and her child badly as his brother, Kashee, did his wife, Panbee, the deceased, the day before the occurrence they had been maltreated, so they agreed they would stand it no longer, and Panbee remarked that if prisoner's daughter was ill-treated when the mother was alive

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what would she be when the mother was dead, so at midnight, they went out together, Panbee carrying the child (who slept with Panbee according to prisoner) and proceeded to the tank, where the bodies were subsequently found. There Panbee put a knife, which she had brought with her into prisoner's hand for the purpose of killing the child, an infant, little more than twelve month's old, but the mother could not with her own hand murder her offspring, her eyes filled with tears and her body shook, so Panbee took the knife, cut the child's throat, threw her into the water, and jumped in herself, still holding the knife. The prisoner then walked into the water, but her heart failed her, she came out and went to Haooreea's house.

Both confessions bear, I think, internal marks of truth and the attesting witnesses* depose that they were voluntarily given. That before the magistrate was taken down, on the 30th June, and duly certified, a few questions were asked of the prisoner on a subsequent day, and her answers indirectly show that her confession was voluntary, this examination ought, I think, to have been headed by another certificate. On the trial at the sessions, the prisoner denied her guilt, and alleged that she and Panbee being ill-treated by their husbands, Panbee proposed to run away, which she objected to, as they would only be brought back again; that Panbee took the child and went to the tank, and laid it down on the bank; that Panbee slipped and fell in, and the child going to the edge after her fell in too; and that she, the prisoner, was too far off to help. This story disproves itself, for if too far off to help, she must at midnight in the then age of the moon have been too far off to see, and besides, if they did not go to the bank to commit murder and suicide, for what purpose were they there?

* Mofussil.
No. 1, Sabur.
3, Toonoo Nosya.
4, Kandoo.
5 Muteeula.
Foujdarry.
6, Madarbux.
7, Burhamulla.

When the darogah examined the bodies, that of the child was almost entirely devoured by jackals, the head and part of the neck and limbs only remained, he reports that he thinks the mark of a cut with a knife may be observed, but he is evidently doubtful, the villagers also did not examine the bodies when first found, and the civil surgeon could not, from the advanced state of decomposition they were in when sent to him. The knife also was not found, so that two important circumstances, by which the truth of the confession might have been tested, have not become available. I see no reason however for doubting the confession, the fact of the murder having been perpetrated in the exact mode described by prisoner is not proved, but that the child was murdered, either by cutting its throat or drowning, is clear. The law officer convicted the prisoner on the 2nd, 3rd and 4th counts, and I concurred, but in awarding pun-

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ishment, the last two charges may be left out of consideration, for they cannot add to the heinousness of the guilt in the 2nd count. Prisoner has always alleged bad treatment by her husband, as the cause of the crime, the witnesses questioned on this point denied it in an equivocal way, and from the admission of No. 4, uncle of prisoner's husband, that people said Hasil beat his wife and did not give her enough to eat, I believe that she was ill-used, on the other hand her husband says, she is unchaste and has always been in the habit of running away; be this as it may, the ill-usage she states herself to have received from her husband is no extenuation of her guilt in aiding the cold-blooded murder of her own child, considering however that she was not the actual perpetrator of the crime, and that she seems to have been under the influence of Panbee, who suggested the murder, carried the child to the tank (taking a knife with her without, I think, prisoner's knowledge) and there murdered it after the mother had refused, a capital sentence is not called for, and I beg to recommend that she be imprisoned for life in the zillah jail with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The police reached the spot where this murder was committed on the 22nd June, the bodies were found on the 21st. There is no sufficient evidence of violence having been committed on the body of the child, alleged to have been killed by Panbee, who is said to have cut its throat before she herself jumped into the tank and was drowned. The prisoner, whose statement was first taken on the 24th June only, was on its being completed at once made a defendant, and is said to have confessed that she accompanied Panbee to the tank, where she refused to kill the child at Panbee's solicitation, but allowed her to cut its throat. Were this proved, an offence of a very serious nature would be established against her, but her several stories vary much, and there is no satisfactory proof, as to which of them may be held to be true. The length of time, which elapsed between the arrival of the police and the period at which the prisoner's answer was taken, is a circumstance of great suspicion, the instrument, with which the child is said to have been killed, has not been produced and the darogah should have referred to the magistrate before, (having once taken her statement,) he made the prisoner a defendant.

We are strongly of opinion that the real facts of this case have not been developed, and in the absence of legal proof, we are bound to acquit the prisoner.

PRESENT:
H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT AND BHUKHTO KHANSAMAH
versus
BADEA THAKUR ALIAS RAJNARAIN SURMAH.

Rungpore.
1854.
November 3.
Case of BADEA THAKUR *alias* RAJNARAIN SURMAH.

The prisoner, an old offender, was convicted of burglary and theft and sentenced to five years' imprisonment.
Appeal rejected.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, Bhukhto Khansamah, and theft therefrom of property valued at Rs. 9, with assault on the witnesses, Buxoo, Nowcouree and Brij Doss; 2nd count, receiving and having in his possession property knowing it to have been obtained by the said burglary.

CRIME ESTABLISHED.—Burglary in the house of the prosecutor and theft therefrom of property valued at Rs. 9, with assault on the witnesses, Buxoo, Nowcouree and Brij Doss.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 1st June, 1854.

Remarks by the sessions judge.—This is the case in which the prisoner having been committed on a charge of burglary with severe wounding of prisoner himself, was sentenced, on the 18th November last, to five years' imprisonment with labor and irons, which sentence was quashed by the Sudder Court for the reason given in the register's letter of the 3rd January last, No. 32. The prisoner having before been convicted of felony, the magistrate was unable to dispose of the case himself and again committed him to the sessions on a charge of burglary with assault. Khola chowkeedar, witness No. 3, hearing a noise near prosecutor's house, as he was going his rounds about midnight, called out, when two persons rushed past him whom he and some of the neighbours immediately followed. The prisoner after some scuffling, in which he himself was wounded, it does not very clearly appear how, and some of the witnesses received blows of no great severity apparently, was apprehended and acknowledged that he and two others had committed the burglary in prosecutor's house and the *petarah*, which he had abstracted therefrom, was found in the hole, where he had thrown it on the chowkeedar's giving the alarm. One of his companions had been seized by witness No. 1, but escaped and there was no evidence against the individuals implicated by prisoner. He confessed both in the mofussil and before the magistrate. The jury, Essurchunder Doss, Ramjadub Sein and Hurochunder Muzoomdar, found him guilty on the 1st charge, excepting the

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assault. I consider the whole charge proved. Although no charge of assault was made, when the prisoner was first committed, the witnesses had mentioned the circumstances, the violence was not great however, and it is not with reference to that, but to the prisoner's exceedingly bad character, he having been once before convicted of burglary and once imprisoned for six months as a bad character, that I sentenced him to five years' imprisonment with labor and irons from the date of his previous sentence, viz. the 18th November last.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The statements of the witnesses, and, such admissions as the prisoner has himself placed on record, are sufficient to prove his guilt and justify this conviction. We reject this appeal.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT AND KALA GAZEE

versus

CHARROO GAZEE (No. 1) AND DOWLUT GAZEE (No 2.)

Tipperah.

1854.

November 3.

Case of CHARROO and DOWLUT GAZEE.

Two prisoners, convicted of cutting off the ear of a man suspected of trying to intrigue with the wife of one of them, sentenced to three years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, assaulting and cutting off Toofanee's ear; 2nd count, aiding and abetting in the above offence.

CRIME ESTABLISHED.—Being accomplices in cutting off Toofanee's ear.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 4th August, 1854.

Remarks by the officiating sessions judge.—The prisoners were charged with assaulting and cutting off the ear of Toofanee, the brother of the prosecutor. The circumstances of this case, as detailed by the prosecutor, are as follows. The prisoner Keamuddy (acquitted) being suspected of having had a criminal connexion with his own mother-in-law, had been expelled from their society by Toofanee and some others, on which account he nourished a deep enmity against Toofanee. On the evening of the 9th of March, the prisoners meeting Toofanee near the dwelling of Dowlut and Charroo, seized him and dragging him forcibly inside, the prisoner Charroo (No. 1,) cut off his ear, and Dowlut (prisoner No. 2,) knocked out two of his front teeth by a blow of his fist. The prisoners Charroo (No. 1,) and Dowlut (No. 2,)

being both of them friends of Keamuddy (No. 3,) had joined him in committing the outrage.

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In the mofussil as well as before the magistrate, the prisoners Charroo (No. 1,) and Dowlut (No. 2,) confessed having assaulted Toofanee and to have participated in the cruel action charged against them, each however stating that the other and not himself was the party who had actually cut off the unfortunate man's ear. The course alleged by both was, that Toofanee had been detected in company of Dowlut's wife.

Charroo (prisoner No. 1,) and Dowlut (No. 2,) it should be stated, are first cousins and inhabit the same *bâree*. Besides the actual sufferer himself, there are no witnesses to the fact.

At the sessions Dowlut (prisoner No. 2,) confessed to having cut off the ear of Toofanee, stating that he had caught him attempting his wife's person, and had in the anger of the moment inflicted this punishment upon him. Charroo (prisoner No. 1,) denied all participation in the offence, only stating that he had heard that Dowlut (No. 2,) had detected Toofanee in company with his wife, and had cut off his ear in revenge.

Three witnesses depose to having seen Toofanee coming out from the prisoner's dwelling, on the night of the occurrence, with his ear cut off and blood flowing from the wound, as well as to having heard from him then and there the details of the outrage inflicted by the three prisoners. Teelab Gazee (witness No. 14,) the village chowkeedar, also states that he saw Toofanee on the same evening lying in his own house with his ear cut off, and that he heard from him that the prisoners had seized him and cut off his ear. The actual proof in this case rests solely upon the confessions of the two prisoners Dowlut (No. 2,) and Charroo (No. 1,) which differ only to the extent that in each the one throws upon the other the blame of cutting off the ear of the man Toofanee, though at the sessions Dowlut (prisoner No. 2,) confessed that he was the party who maimed Toofanee. Be the truth, with reference to which party actually inflicted the wound, what it may, the fact of participation in this cruel and abominable outrage is clearly established against both. Neither does the reason alleged for committing the crime at all bear the stamp of probability. That the man Toofanee should, as alleged by the prisoners, have entered the house at the hour mentioned (7 or 8 in the evening) at a time when the husband, Dowlut, (prisoner No. 2,) must have been awake, for the purpose of having an intrigue with his wife, is utterly improbable. Nor is it attempted to be supported by any evidence.

In conformity with the opinion of the law officer, who held that participation in cutting off Toofanee's ear was made good against both prisoners, by violent presumption, as well as by the tenor of their several confessions, both here and in the mofussil, I sentenced them to imprisonment for three years, and to pay

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a fine of twenty-five rupees, or in default of payment to hard labor until the expiration of the term of their sentence, or till the payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prosecutor's statement is fully confirmed to this extent, by the admissions of the prisoners themselves, that they were the parties who cruelly maltreated him. Their plea that they took the prosecutor in the act of forcing the wife of the prisoner, Dowlut, is not borne out by evidence, nor have they called any witnesses to their defence. The fact of the prosecutor being near the house, with the intent of carrying on an intrigue with the wife of one of them, could be no justification of this barbarous treatment. We therefore reject the appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

DEODUT AND ZOHUREE DUFFADAR.

Rungpore.

1854.

November 3.

Case of DEODUT and ZOHUREE DUFFADAR.

Two prisoners, chupprassies, attached to the G. T. Survey, convicted of the culpable homicide of a man, in whose pool of water they had tried to catch fish, and sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Culpable homicide of Pran Doss.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 17th June, 1854.

Remarks by the officiating sessions judge.—The prisoners, chuppprassies attached to the G. T. Survey, were stationed at an outpost, they, and another released by the magistrate, were returning to their post after despatching a load of wood to the head-quarters at Titalya; on their return, they saw a hole in a paddy field with water in it, and a pot with a string tied to it lying near, they commenced baling out the water with the pot, in order to catch fish. Pran Doss, deceased, to whom the hole belonged, came out from his house, a short way off, accompanied by his grandson, witness No. 6, and forbad them; some sharp words passed, prisoner, No. 8, struck deceased with a cane stick, No. 9 hit him on the cheek with his hand and knocked him into the hole. This hole was about eight feet square with one and half or two feet of water in it, the surface of the water was about the same depth below the level of the ground, and a small bund of the earth thrown out rose about the same height

and the edge. Deceased was very soon after being knocked in taken out by prisoners and their companion, and was either dead, when taken out, or died immediately on being taken out. The question is, how he died. Witness, No. 1, who was nearer to the spot than any other witnesses, states that after being knocked into the hole, on which point all the witnesses agree (Nos. 1, 2, 3, 4, 5 and 6,) the deceased was kept down in the water by prisoners, Nos. 8 and 9, who poked him with their canes, when he rose, and that he was so kept for one *ghuree*, prisoners not moving from their position on the edge, they then took him out dead; before the magistrate, he said he was six fields *(kittas)* off, here he says he was ten or twelve feet (*haths*,) near enough to see the surface of the water, he explains that the fields were very small, he also denies stating before the magistrate that prisoners used their feet to keep down deceased, or that deceased vomited on being brought out of the water.

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Witness, No. 2, was about two beegahs off, somewhat further than No. 1, whose evidence he confirms with this difference that on seeing deceased knocked into the hole, he ran up, stopping for an instant to drive back his cattle, which were also going towards it, and that on getting to the hole, prisoners had taken deceased dead, out of the water; in running up, he saw them holding deceased down in the water with their canes, they did not descend into the water themselves.

Witness, No. 3, was also about two beegahs off, ran up almost immediately on seeing deceased knocked into the hole, saw, as he was running, prisoner No. 9, holding deceased down in the water with his cane, as he came up, prisoners took deceased out, who died, he says, at one time in the water, at another out of it, his body quivering as it was raised; witness No. 1 arrived at the hole one *ghuree* before him, a phrase which explains that witness's assertion of deceased having been kept in the water one *ghuree* by prisoners, in fact the witnesses were the most stupid fellows I almost ever saw, they had no distinct idea of time or distance, and it was extremely difficult to make them comprehend the simplest question. Before the magistrate, this witness stated at one time that prisoner, No. 9, alone pushed deceased down in the water, at another that both prisoners did so.

Witness, No. 4, was about ten fields *(kittas)* off, witnesses, Nos. 1, 2, 3 and 5, arrived before him at the hole, saw prisoner, No. 8 strike deceased with cane, and No. 9 slap him on the face, and knock him into the hole, did not see them keep him down in the water.

Witness, No. 5, was about one *rushee* off, but points out from the cutcherry, a distance of one hundred or one hundred and twenty-five yards to show what he means, saw prisoners strike

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and knock deceased into the hole, and keep him down, as he, witness, was running up, when he arrived, they had pulled him out.

Witness, No. 6, a boy of seven or eight years old, grandson of deceased, accompanied deceased to the hole, when he went to stop prisoner from fishing there, he corroborates the story told by the preceding witnesses; but being quite unable to understand the import of an oath, I lay no stress on his evidence. The above witnesses declare that deceased was not subject to fits, and had no disease at the time.

Witnesses, Nos. 7, 8, 9 and 10, are witnesses to the *sooruthal,* and also witness, No. 11, the civil assistant surgeon, who was unable to examine the body from the state of decomposition it was in; witness, No. 12, wife of deceased, states that her husband after eating, went to stop some persons from catching his fish, and she soon after heard he was dead.

Witness, No. 13, Mr. Berrill, assistant surveyor, heard when at Titalya of the occurrence first from a khalashee, who gave prisoner's version, and secondly from a zemindar in the neighbourhood of deceased's village, who gave pretty nearly the version of the witnesses above noted, went to the spot the same afternoon, saw the body near the hole, which he describes and thinks it impossible for a man to be drowned in it by two others holding him down with the canes produced in court, which the chowkeedar of the village had taken possession of. A man and boy told him that deceased had died as above related, the other villagers did not know, and the prisoners told the story hereafter given by them in their defence.

Witness, No. 14, Munnoolal, a native doctor attached to the survey, accompanied the last witnesses, examined the body and saw no marks on it, deceased's wife said that her husband hearing some people were catching his fish, went out to stop them, and shortly afterwards, she heard of his death, a man and boy stated that deceased had met his death as above related.

Prisoners state that they were returning to their post, when they began to empty the water out of Pran Doss's hole as above mentioned, that they stopped on being remonstrated with, by deceased, who then went home, brought a net and began to catch fish for them, that observing he remained sometime under water, they became alarmed and pulled him out, and that he died immediately after. They named one witness at the foujdarry, the party released by the magistrate, who was not present when called for, and the prisoners not requiring his deposition as necessary, I did not postpone the trial for his appearance.

It is clear that prisoners knocked deceased into the hole and that he was taken out dead or dying; if the statement of the witnesses and particularly No. 1, is true that prisoners kept deceased down in the water for sometime, the case would be one

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of murder not of culpable homicide, but from the evidence of the other witnesses, who at a distance, not exceeding one hundred and fifty yards, began to run up when they saw deceased knocked down, and found, on reaching the hole, that he was brought out of it by the prisoners themselves, I think it impossible that death could have been caused by drowning in such a short period, and that it must have occurred from the bursting of a blood-vessel or the spleen, either from the shock of the two blows given from the fall into the hole or from the pokes of the canes applied to deceased by prisoners, when he tumbled into the hole, which pokes, I think, appeared to the witnesses to be a pushing down of the deceased under the water.

The law officer convicts the prisoners of culpable homicide and liable to punishment by *deeut* or *akoobut;* he mentions in his *futwa* that the evidence would have supported a charge of murder, but on this point I do not agree with him, the prisoners had no intention of killing deceased, and I do not think the evidence proved that they tried to keep him under water; they were however engaged in an illegal act, and when remonstrated with by deceased for attempting to take away his property, they attacked and assaulted him, in which assault he met his death, I therefore sentence the prisoners to seven years' with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The defence set up by the prisoners does not account for the death. It is impossible to conceive how the deceased could have been accidentally drowned, as asserted, in a small pool of water (said to be only two feet deep) with such assistance at hand as the prisoners affirm they were ready to give, and readily afforded. In the absence, therefore, of all other reason to account for the man's death, and seeing no apparent cause for malice or untruthfulness on the part of the eye-witnesses, we must accept their statements to the extent allowed by the sessions judge on the trial, and uphold his conviction on the charge against the prisoners.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT AND MUSST. NYOOREE
versus
RAMJOY JALEA.

Tipperah.

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Case of RAMJOY JALEA.

Prisoner convicted of the culpable homicide of his brother's widow whom he suddenly found speaking to a man of whom he was jealous, sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—Wilful murder of prosecutrix's daughter, Musst. Toofanee.

CRIME ESTABLISHED.—Culpable homicide of Musst. Toofanee, daughter of the prosecutrix.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—The deceased woman, Toofanee, was the wife of the prisoner's brother, who died about three years since. It appears that she had cohabited with the prisoner since his brother's death, living with him in the same house.

On the 24th of May last, the woman having gone down to the *ghat* to wash some household utensils, entered into conversation, when there, with a man named, Ramnarain Jalea, with regard to whom, it seems, the prisoner had entertained some jealousy, and had forbidden the deceased to speak to him at all. The prisoner suddenly coming up and finding her in conversation with this man, in the anger of the moment, struck her two slaps, and gave her a violent kick with his foot under the breast. The woman fell immediately and the prisoner went away without further noticing her. Five witnesses, who were standing near and saw the whole transaction, raised the unfortunate woman from the ground and conveyed her to her house, which was close by, when they found that she was quite dead.

In the mofussil and before the magistrate, the prisoner confessed having struck the woman two blows, but said nothing of having inflicted the kick, which unquestionably put an end to her existence.

At the sessions, he pleaded not guilty, denied altogether having struck the deceased, saying that she died of illness.

The plea of the prisoner is in this case totally unavailing. Not only is the fact of his having kicked the deceased, in the manner above detailed, fully proved by unquestionable evidence of several witnesses, who saw the whole, but his averment as to her having died from disease is totally unsupported. Of the six witnesses, whom he named to prove the fact, one man declared his total

ignorance of the deceased having laboured under sickness, and the prisoner on hearing this deposition, declined calling any other witness.

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The law officer declared the prisoner guilty of culpable homicide, with which opinion I entirely concurred, and sentenced him to be imprisoned for four years, and to pay a fine of twenty-five rupees within twenty-five days, otherwise to labour until the expiry of his term of sentence, or until payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner in appeal reiterates his plea that the woman died a natural death, and alleges that the witnesses, who gave evidence against him, were at enmity with him. The woman's death is attributed by the witnesses to the violence they witnessed on the part of the prisoner, and of that fact there seems to be no room for doubt. At the trial moreover the prisoner failed altogether to establish aught in his defence. We see no reason therefore to interfere with the sentence passed upon him.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT,

versus

NURSING PANDEY (No. 2,) AMEER TEWAREE (No. 3,) DAHAREE (No. 4,) RADHAY (No. 5,) BHOWANY DIAL (No. 6,) GENDA SAHOO (No. 7,) AND GUNGA-PERSHAD (No. 8.)

Sarun.

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Case of NURSING PANDEY and others.

CRIME CHARGED.—Nos. 2 and 3, knowingly uttering a forged document (*tumussook*) and Nos. 4 to 8, being accomplices in the above.

CRIME ESTABLISHED.—Being accomplices in the crime charged.

Committing Officer —Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 24th July, 1854.

Held that parties uttering a forged deed before a Register of deeds cannot be sent by that officer to the civil judge to be made over to

Remarks by the officiating sessions judge.—This is a case of unsuccessful attempt to register a forged bond. On the morning of the 15th June, the defendants, seven in number, went to the registry office with the bond, delivered with a petition to the register, Dr. Fleming, by defendants Nos. 2 and 3, says the registry moonshee; the other witnesses, two chuprassees, being

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the magistrate, there being no case pending as required by Act I. 1848. The parties aggrieved by the forgery should institute a prosecution before the magistrate.

unable to state who presented it. According to this document, Daharee, defendant No. 4, had advanced 95 Rs. to Gunnoo and Jugput [represented by defendants Nos. 2 and 3, Nursing and Ameer,] identified by defendant, No. 5, who was examined under Act V. of 1840. The defendants Nos. 2 and 3 stated that they had executed the deed and received the money; but when asked if they could write, they admitted they could not. This excited suspicion, as the bond was signed by Gunnoo for himself and Jugput. Daharee, defendant No. 4, then stated in answer to a question put to him that Jugput had signed the bond; and on this, defendants Nos. 5, 6 and 8 seeing that the fraud was discovered, ran away from the office, but were pursued by the chuprassees, brought back again, and were then sent by the Register to me, as civil judge, and afterwards made over by me under Act I. of 1848 to the magistrate, by whom they have been committed for trial. Defendants Nos. 6, 7 and 8 were not questioned at the registry office, but went with the rest to have the deed registered, and were thus accomplices in uttering the deed; and that the bond is a forged document cannot for a moment be doubted, for the two parties in whose name the deed is executed were at the station on the morning in question, and attended at my office shortly after the defendants reached it. These live in the town of Chuprah, close to Gungapershad, defendant No. 8, and between the two families there have been feuds for the last three generations; and this is the way in which Gungapershad has attempted to pay them off, for there is no doubt that he is at the bottom of the plot Had Gunnoo and Jugput actually borrowed the money of Daharee, they would have attended themselves at the registry office, there being no possible reason why, being at the station, they should send two others to personate them. Of the defendants, Nursing No. 2 admits having played his part at the instigation of Gungapershad, defendant No. 8. Defendant No. 3 has no defence to offer in my court; that first of all made being that he and Nursing had personated Gunnoo and Jugput at their own request, as they said they had no time on the morning in question to attend at the registry office. Defendant No. 4 says that he advanced the money to Gunnoo and Jugput, but he admits that the bond was not written at the time, and says that he went to the registry office with defendants Nos 2 and 3, who undertook to personate Gunnoo and Jugput,—Radhay identifying them, and defendant No 7 also accompanying them. Defendant No. 5 says he became a witness to the bond at the request of Gunnoo, who said he had received the money from Daharee, and he admits having identified defendants Nos. 2 and 3, as Gunnoo and Jugput, by Gunnoo's desire. Defendant No. 6 admits having written the bond produced in court, but says the money was not paid before him, and that the following morning he met

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Gungapershad on the road near the Register's, when he was seized by the chuprassees and taken to the office, where he discovered, not Gunnoo and Jugput who had really borrowed the money, but defendants Nos. 2 and 3, who had personated them. This defendant has no witness to call in defence. Defendant No. 7, Genda, says he became witness to the bond at the request of Gunnoo and Jugput, who said they had got the money, and that next morning two men called at his house, when he was absent, and left directions for him to go to the Register's which he accordingly did, and there to his surprise found, not the two who had borrowed the money, but defendants Nos. 2 and 3, who had come instead. The defence of Gungapershad is, that he happened to be on the road opposite the Register's house, when he saw Radhay No. 5, followed by the chuprassees, and that on his asking what was the matter, he was himself seized and carried to the Register. This account is supported by the evidence of eight witnesses, but no reliance whatever can be placed on their testimony, as Gungapershad declines examining the Register himself, whom I offered to send for, if he wished it. Had he not gone with the party, the Register would not have committed him. The witnesses may have seen him seized by the chuprassees, for he was caught by them after he had run away from the office with Radhay and Bhowany Dial, but their statement that he was seized in consequence of enquiring about Radhay is manifestly false. The Moulvee holds the bond to be a forged document, and that the defendants are all guilty of being accomplices in the crime of knowingly uttering the forged bond. Radhay No. 5, is also separately charged and convicted of perjury, and his sentence of seven years' imprisonment, with labor in irons, is recorded in that case. The prisoners are sentenced as above. Genda being imprisoned for five years as he is an elderly man. In every case of this sort, the severest punishment is absolutely necessary, for the crime established in this case is one of the gravest that can be committed against society. Men may protect themselves against open violence, but it is hardly possible to guard against villains who prepare forged documents, and then make the judges of the land their instruments of oppression. There can be no doubt for the particulars detailed by Gunnoo and Jugput, but that Gungapershad has sought to punish them, his enemies, by forging a bond in their names, and had he been a little more careful he might have succeeded. Not one case, in one thousand, I believe, of this sort is successfully prosecuted; and it is proper that when conviction does ensue, the punishment should be calculated to deter others from the crime.

Sentence passed by the lower court.—Nos. 2, 3, 4, 6 and 8, each to be imprisoned with labor in irons for seven (7) years from the 24th, July 1854, and No. 7 to be imprisoned with

1854. labor in irons for five (5) years. For the sentence on the prisoner No. 5 see the following case.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, and J. Dunbar.)

Mr. H. T. Raikes.—This prosecution for forgery has been originated by the civil judge, under circumstances which give him no jurisdiction in the matter.

The parties or some of them appeared before the Register of deeds to register a document, which, from circumstances occurring before him, the Register suspected to be a forgery, and forwarded the suspected parties and the document to the zillah judge.

The judge, concurring in these suspicions, drew up a proceeding addressed to the magistrate, and quoting Act I. of 1848 as his authority, directed the magistrate to try the parties accused on a charge of forgery, and to commit them for trial if the charge was proved. This, the magistrate did, and the trial at the sessions resulted in the conviction of the prisoners now before us.

I hold that the judge was wrong in issuing the orders he did, and that he could not legally initiate these proceedings against the prisoners.

The suspicious document in question had not been offered in evidence in a case pending before his court, it was not therefore subject to his judicial cognizance, and he had consequently no authority under Act I. of 1848 to direct the magistrate to take up and proceed with such a charge against the prisoners. As the proceedings of the magistrate have clearly originated in the illegal orders of the judge, I would quash the trial as irregular, and direct the release of the prisoners, leaving the injured party to institute a prosecution in the usual way before the criminal authorities.

Mr. J. Dunbar.—I concur with Mr. Raikes that the judge had no jurisdiction under Act I. of 1848. That enactment is clearly not applicable to the case; but I do not see that the misapprehension of the judge in this particular should vitiate the commitment. The parties intended to be injured by the registration of the spurious document were (however brought there) before the magistrate, and anxious to have justice done, and I do not see how he could have thrown the case out, as it was not one of those which he could decline to receive under the provisions of Act I. of 1848, having no reference to a document filed as evidence by a party in a case pending before any court.

Messrs. J. Dunbar and H. T. Raikes.—As we are at variance on a point of law, and it is one of importance, we think the legal question had better be referred to the Court at large, and that counsel be heard as there are *vakeels* on both sides.

FULL BENCH.

25th October, 1854.

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Case of NURSING PANDEY and others.

Murhumut Hosein for the prisoners.—Certain parties took a bond to be registered by the Register; that officer, considering the deed a forgery, sent them up to the judge, who in his civil capacity took the depositions of those whose names were forged and forwarded the proceedings dated 17th June, 1854, to the magistrate under Section 2, Act I. 1848, for enquiry.

The whole of this is irregular; and the proceedings are void *ab initio*. The law quoted by the judge is inapplicable, no case was *pendente lite*.

Argument for the prosecution.—Sumboonath Pundit relies on Clause 2, Section 14, Regulation XVII. 1817, and Construction 611, the perjury was dependent on proof of forgery, the judge was bound by the above law to send the case on to the magistrate, who was directed to commit on any charge he might think proper. The magistrate has made no mention of Act I. 1848 in his *roobukaree* of commitment.

Rampershad Roy in support.—Forgery is considered a heinous offence by Regulation IX. 1807. The magistrate could, of his own authority, take cognizance of this case, all the proceedings of the Register and the judge being set aside; and the judge directed that any charge which the magistrate thought proper might be preferred against the prisoners. If the magistrate has this authority, the permission of the judge is so much surplusage and of no force.

The magistrate, on receipt of the judge's *roobukaree*, ordered the deposition of the plaintiff to be taken, but did not know on what charge he was going to commit the prisoners. Subsequently, in his commitment, he acted on his own responsibility, and made Government prosecutor and the aggrieved parties witnesses.

Argument for the defence, Murhumut Hosein contra.—The magistrate was first aware of the charge of forgery through the judge's *roobukaree*, and his proceedings were consequent on receipt of it, which ordered the prisoners' commitment on a charge of forgery, &c., at the discretion of the magistrate. This is not similar to a public offence, such as dacoity or affray, &c. Forgeries may be committed in private, and the offence must be brought forward to the notice of the criminal court.

Mr. A. Dick.—It has been ruled that a Register can send up to the judge a case of perjury committed before him. Such a case was before the judge, and the forged document in question was adduced in evidence. There was therefore a case legally pending before the judge, and the document adjudged to be forged was offered in evidence; for without it the perjury could not have been established. The law, Act I. of 1848, has the word *case*, and not *suit*. I am therefore of opinion that the judge was authorized to send the charge under section 2, Act

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I. 1848, to the magistrate for investigation. If the judge could not send the charge to the magistrate because no *civil suit* was pending before him, then the commitment of the prisoner for forgery by the magistrate was illegal. There was no complaint or charge preferred on oath to him. This is prescribed in Section V. Regulation IX. 1793, and Sections 3, and 4, Regulation IX. 1807. In no other mode is a magistrate authorized to take cognizance of crimes, except when being perpetrated.

Sir R. Barlow, Bart.—There can be no doubt that the judge brought the forgery, which he considered to have been committed, to the notice of the magistrate in his *roobukaree*, and at the same time sent the parties over to the foujdary court. (See statement No. 6.) The magistrate on the receipt of this proceeding, which the judge states he founded on the provisions of Act I. of 1848, ordered that the enquiry should commence. Previous to this the magistrate had no knowledge of the case; but in furtherance of the investigation which the judge had already made, the magistrate took the *evidence* of the party whose name it was alleged had been forged, no *application* or petition on his part for an enquiry having been preferred in the foujdary court.

No case was pending in the civil court. The signature alleged to have been forged was not offered in evidence in that court. The judge could not, therefore, under the law upon which he relied, initiate a criminal investigation and refer the matter to the magistrate. The proceedings are therefore void *ab initio*, and the indictment "uttering a forged document knowing it to be such" cannot stand.

Mr. J. H. Patton.—I concur with Sir Robert Barlow.

Mr. H. T. Raikes.—Sir R. Barlow and Mr. J. H. Patton having concurred in the view of the law taken by me, I would only remark that the Court at large, on the 10th of June 1853, on a reference from the additional judge of Chittagong, ruled unanimously that "the provisions of Act I. of 1848, are confined to *cases* before the *civil and criminal courts.*—In the present state of the law, therefore, prosecutions for forgery committed before a Register of deeds can be instituted before the magistrate, in the same manner as for any other forgery not committed before a civil or criminal court on the information on oath or solemn affirmation of any one." This applies to the case now before us; and had the judge of Sarun acted in conformity with the provisions and intent of the Act referred to, he would have left the aggrieved parties to proceed against the accused in the usual course here pointed out namely by information on oath, &c.

As to the course now to be pursued in disposing of the case before us, it appears to me, that in conformity with the prac-

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tice of the Court in the cases noted in the margin,* the proceedings must be quashed, and the parties competent to bring forward charges of this nature left to exercise their own discretion as to commencing proceedings in the foujdary court.

* Case of Sookhun Lall. p 1124, of Nizamut Reports for 1851.
Case of Luckenath Bhuttacharj, p. 1666 of ditto for ditto.

Mr. B. J. Colvin.—I am of opinion that the judge had no jurisdiction under Act I. 1848, for no case was pending before him as contemplated by that law. He was therefore in error in citing that law when he sent the parties to the magistrate. His proper course was to inform the party, attempted to be injured by the accused, that he was at liberty to prefer the charge of forgery against them before the magistrate. It remains to be considered whether what the judge did vitiates the proceedings. I do not consider that it does, for it did not bind the magistrate in any way, and it amounted to nothing more than officially bringing to the magistrate's notice the allegation of forgery for him to deal with the case as he saw proper. It is of course presumed that the injured party wished to have the accused brought to justice.

Messrs. H. T. Raikes and J. H. Patton.—A majority of the Court having determined that the trial of the prisoners on a charge of forgery, in conformity with the orders of the civil judge passed in a case, not pending before his court, is irregular, we quash the proceedings held in this case, and direct the release of the prisoners.

The parties, considering themselves aggrieved by the alleged fraudulent acts of any of the parties concerned, are of course at liberty to commence proceedings against them in the foujdarry court in the usual course.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

Sarun.

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Case of RADHAY.

GOVERNMENT

versus

RADHAY.

A prisoner charged with perjury before the Register of deeds should be sent by that

CRIME CHARGED.—Perjury, in having on the 15th June, 1854, corresponding with 5th Assar 1261, F. S., deposed under a solemn declaration, taken instead of an oath, before the Register of deeds of zillah Sarun, that Nursing Pandey and Ameer Tewaree were Gunnoo and Jugput Tewaree, respectively, and

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that they were the persons whose names were entered in a document (to the attesting of which he had been summoned as a witness,) such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

officer to the civil judge who is competent to commit him to the sessions.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 24th July, 1854.

Remarks by the officiating sessions judge.—The evidence of the witnesses, Nos. 1, 2 and 3, convicts the prisoner of the crime charged, which is admitted by the prisoner himself. The moulvee finds him guilty, and as he has been in the other case No. 3, convicted as an accomplice in the crime of knowingly uttering a forged bond; I sentence him as above.

Sentence passed by the lower court.—To be imprisoned in this and the preceding case with labor in irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner has been convicted by the judge of perjury before the Register of deeds. A crime of this nature, believed to have been committed before a Register of deeds, is cognizable by the civil judge of the district under Clause 2, Section 14, Regulation XVII. of 1817, who is empowered to commit the accused for trial at the sessions court.

In the present case, there have been no proceedings held by the judge regarding the alleged perjury; the prisoner and others were forwarded to the magistrate with a *roobacaree* from the judge, stating that he transmitted them to the foujdary court under Act I. of 1848, in the belief that they were all concerned in a forgery brought to light before the Register of deeds.

The magistrate, in accordance with the instructions of the judge, committed the prisoner and others on a charge of *forgery* (as detailed in the remarks on the trial of Nursing Pandey and others disposed of to-day,) and charged the prisoner in a separate calendar with perjury also. On that charge the sessions judge convicted the prisoner, and in addition to the sentence passed on him for forgery has imprisoned him for two years in the present case. As the magistrate had no authority to originate a charge of perjury, alleged to have been committed before another court, the commitment and trial of this man are quite illegal, and the prisoner must be released.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT AND SUFFEE MAHOMED
versus
ATA.

Rungpore.

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November 3.

Case of ATA.

Prisoner convicted by the sessions judge of receiving stolen property acquitted in appeal, the place where the property was found being accessible to any one, and the search of the prisoner's house having been made in his absence.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor Suffee Mahomed and theft therefrom of property valued at Rs. 7-10, belonging to the said Suffee Mahomed; 2nd count, receiving and having in his possession property, knowing the same to have been obtained by the said burglary.

CRIME ESTABLISHED.—Receiving and having in his possession property, knowing the same to have been obtained by burglary.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 30th May, 1854.

Remarks by the officiating sessions judge.—Suffee Mahomed hearing a noise at night, got up and found his house had been burglariously entered, and a number of brass utensils carried off, he suspected Ata, a bad character in his neighbourhood, of being concerned and having had his premises searched by the police, two brass *thalees* proved to be the property of prosecutor, were found in the ash-heap close out-side the house. In the house of Haree and Dawye, near relations of prisoner, a *lota* and cup belonging to prosecutor in this case and a *degchee* to prosecutor in case No. 2, of statement No. 8, were found, and it was proved by Belaitee, wife of Dawye (who had been acquitted by the magistrate) that these articles had been deposited in her house, in spite of her opposition, by Maudai, the mother-in-law of Ata, just as the police had approached Ata's house for the purpose of searching it, this fact she communicated to the jemadar and villagers when the property was found in her house, and I gave full credence to the truth of her statement; Ata has before undergone two years' imprisonment for burglary, and bore a very bad character among his neighbours. On these grounds the law officer found him guilty, on violent presumption, of the 2nd count of the charge and agreeing with him, I sentenced the prisoner as mentioned.

Sentence passed by the lower court.—Imprisonment with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The alleged proof against the

1854. November 3. Case of ATA.

prisoner is the discovery of property in an ash-heap near his house. The sessions judge moreover remarks that he places full confidence in the statement of a woman named "Belaitee," (the wife of another person accused) that some articles of property found in her husband's house were placed there by the prisoner's mother-in-law. These are the grounds of conviction. We find however that the ash-heap alluded to was situated outside the prisoner's house and must have been accessible to any one, and that the search of the prisoner's premises was made in his absence. A presumption of guilt deduced from the finding of property, said to be discovered under such circumstances, is too doubtful to be relied upon. As to the statement of the woman Belaitee, we observe that the articles she alludes to were found in different rooms concealed under straw, and the fact of these having been so concealed by the prisoner's mother-in-law was deemed by the magistrate too improbable to make use of her evidence, on the part of the prosecution. She was therefore not produced as a witness against the prisoner on the trial, but appeared as a witness in support of the *defence* of the prisoner Haree released. Under these circumstances, the sessions judge was not justified in considering her evidence in the light of proving the guilt of the prisoner. We have therefore entirely discarded it and considering, as remarked above, that the discovery of the property in the ash-heap is insufficient to support the conviction, deem the prisoner entitled to his acquittal. Ordered accordingly.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND OTHERS

versus

GOODREE (No. 4,) AND ABLACK (No. 5.)

Sarun. 1854. November 4. Case of GOODREE and ABLACK. The prisoners' appeal was rejected.

CRIME CHARGED.—No. 4, culpable homicide of Lowtoo Chamar and Musst. Foolguria his daughter aged eight years. No. 5 aiding and abetting in the same.

CRIME ESTABLISHED.—No. 4, culpable homicide of Lowtoo Chamar, and No. 5 aiding and abetting in the above.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 21st August, 1854.

Remarks by the officiating sessions judge.—This is a singular case of homicide. The prisoners went on the 6th July to Low-

1854. November 4. Case of GOODREE and ABLACK.

too's house to press him as a "*begar*." He had at the time some tobacco in his hand, and was about to prepare his *hookha*, which his daughter, a child eight years of age, held close to him. On their telling him to come along with them he said he would after he had his *hookha*, and this not satisfying them, Goodree commenced grossly abusing him. The deceased answered very temperately, but still not preparing to leave his home, Ablack, armed with an iron-bound *lattee*, beat and seized him, on which Goodre, a tall powerful man, gave him a violent dig in the ribs with a long heavy *lattee* he held in his hand. The blow knocked him down over his child, whose neck is said to have been twisted, and who was from that time, till early the following morning insensible, when she expired. Lowtoo was carried inside by his wife and brother, the prosecutor, and afterwards aided by them went to the ticcadar of the village to complain. Returning home he was ill all night, vomiting violently after drinking water, and he expired next day at 12 o'clock. The bodies were then taken to the thannah near the village, and afterwards sent into this station, where they were examined by the civil surgeon Dr. Fleming on the 8th. From the heat of the weather, the bodies were swollen from decay, and bore no marks of injury whatever. The healthy state of the viscera led the civil surgeon to suppose that death might have been caused by some narcotic poison, but he allows that the contents of the stomach might present the same appearance, though no poison had been administered. The witnesses to the *sooruthal* state that when they saw the bodies at the thannah, they observed slight marks on the part where the butt-end of the bamboo touched the body of Lowtoo, and there is no reason whatever for doubting the evidence of the witnesses for the prosecution, five in number, who saw the prisoners act as I have described, and this evidence is confirmed by the account given by the prisoners themselves, both admitting that they went for Lowtoo and others to do some work for the putwaree. Goodree says that he refused to accompany him and went away to plough. Ablack stating that on his refusal, abuse passed between them when Goodree used his *lattee*, as described by the witnesses for the prosecution. The prisoners have no evidence to clear them. All of the place appear to have heard and to believe that the deceased Lowtoo and his child came by their death as explained. The death of the child was accidental, but the prisoners are guilty as charged in regard to Lowtoo, in the opinion of the moulvee and myself, and are accordingly sentenced as above, the violence used being altogether unprovoked, and the prisoners having gone to seize the deceased illegally.

Sentence passed by the lower court.—No 4 to be imprisoned with labor in irons for seven (7) years from the 21st August, 1854, and No. 5 to be ditto ditto, without irons for four (4)

1854. November 4. Case of GOODREE and ABLACK.

years from ditto ditto, and to pay a fine of one hundred rupees on or before the 20th September next, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The case for the prosecution is supported by the answers of the prisoners, especially before the magistrate. Seeing no reason for interference with the finding and sentence, we reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND BHUBEE CHURN ROY,

versus

DOOR.

Sarun. 1854. November 4. Case of DOOR.

The sentence passed upon the prisoner was considered insufficient.

CRIME CHARGED.—Culpable homicide of Suntoke Roy.

CRIME ESTABLISHED:—The same as crime charged.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan with full powers of a magistrate.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 17th August, 1854.

Remarks by the officiating sessions judge.—The prisoner in this case, though not charged with theft as he might have been, went, on the night of the 26th June last with his two brothers Gopee and Surun, who have absconded, to steal mangoes in the tope belonging to Puhul Roy one of the maliks of Seontha, close to which the prisoner lives. The deceased with witnesses Nos. 1 and 2 were on watch and warned them off. Abuse passed between the parties, on which the prisoner attacked the deceased and dealt him a blow on the head with his iron-bound *lattee,* which knocked him down and caused instant death. He was seized by Hullee, witness No. 2, but being aided by his brothers escaped at the time, though not till all three had been recognised, for though the night was dark the prisoner and his brothers were well known to the witnesses who were close them. The crime was reported the following morning to the darogah, the prisoner being named as the party by whom the deceased met with his death, and the charge is fully proved by the witnesses Nos. 1 and 2, whose evidence there is no reason at all to doubt, for though the prisoner denies the charge, and says he was at home on the night in question, such absence is not attempted to be established. Of the witnesses produced on prisoner's part, some merely state that the prisoner is a good

man, and that enmity has existed for the past two years between the Seontha maliks and the prisoner and his brother, while others know nothing of the case, two stating that they heard the next morning that the prisoner had killed the deceased. It is not alleged that the deceased met his death any other way than that I have explained, nor is the slightest proof offered of a false charge having been got up for the occasion. The moulvee convicts the prisoner, *deeut* being the penalty, and I have sentenced him as noted.

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November 4.

Case of Door.

Sentence passed by the lower court.—To be imprisoned with labor in irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) The Court, on review of the statement No. 6, in the English department, remarked upon the inadequacy of the punishment awarded by the sessions judge, with reference to the offence committed by the prisoner who should have been tried for wilful murder, not for culpable homicide. The prisoner has appealed; and as the law does not permit any enhancement of punishment, under such circumstances we can only refrain from interference with the sessions judge's orders.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND CHUCHURN SONAR, FAKEER AND MUSST. MUNBUSEAH

versus

NURSING DASS.

Sarun.

1854.

November 4.

Case of Nursing Dass.

The prisoner was convicted of the abduction of child.

CRIME CHARGED.—Abduction of Musst. Parbuteah, an unmarried female, minor, aged eight years or under, the daughter of the plaintiffs.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan, with full powers of a magistrate.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 11th August, 1854.

Remarks by the officiating sessions judge.—This is a singular case of abduction. The defendant, it is supposed, thought to secure payment of a sum of money by obtaining possession of plaintiff's daughter, and accordingly, on the 5th or 6th of October, 1851, he went to the plaintiff's house, when he was away from home on business and carried off the child, then about seven years of age. The mother and child say he took her away

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Case of NURSING DASS.

by force, but from the account given by three witnesses, who saw them going away from their home, it does not appear that any violence was then used by the prisoner, and it is very possible that as both plaintiff and defendant lived in the same place, Baturda, a thannah station, the child, knowing the defendant, was not alarmed and accompanied him without resistance. From that time till Poos last, nothing was heard of the child or of the prisoner. She then reached her home now at Nagadah, four *coss* from Baturda, dressed as a boy, and it seems that the defendant concealing her for a time in a field of Indian corn, took her to a neighbouring village the first night, and then started on an expedition to Aujoodeah in Oude and other distant places. They travelled about together till Poos last, when the defendant brought her near her home and then told her to find her way to her parents at the village in which they now reside. The child says that she was obliged by threats of punishment to keep quiet and that she acted as the prisoner's servant, he giving out that she was a brahman's boy, by name Ram Pudorut, who had become his *chelah*. What the man really intended at first to do with the child, it is difficult to say, but he has brought her back uninjured and is therefore simply charged with abduction. The mother, three days after the child was carried off, complained at the thannah, close to her own home, having been at first restrained by a friend of the prisoner, who said he would get her child back, but the darogah, Enait Hossain, neglected his duty by simply noting the complaint in the *rozenamcha*, and not reporting the matter to his superior. Subsequently, in 1852, after the appointment of another darogah, search was made for the defendant, but without success, and he at last came forward on the day of the sale of his property seized in consequence of his absence. The prisoner says he has had nothing to do with the child, but that he has for the last four or five years been on a pilgrimage to Juggernath and visiting various places, and many witnesses are produced, who state that he left the place in Koour 1257, F. S., but their evidence is worthless, and the abduction is clearly proved by the evidence for the prosecution. In this instance, it is not known that the prisoner has ever attempted to sell or otherwise improperly dispose of the child, but he nevertheless deserves severe punishment, for the parents have had above two years' anxiety and been so jeered by the people of their village that they have been obliged to leave their native place of residence, and moreover had the prisoner happened to die while away, the child, in all probability, would have fallen into the hands of some prostitute, and been doomed to a vicious life all her days. I have therefore sentenced the prisoner as noted, the law officer finding the crime charged established, and the prisoner liable to discretionary punishment, which I award under Clause

7, Section 2, Regulation LIII. of 1803, as the case has not been committed under Section 2, Regulation VII. of 1819, and is not punishable under Section 6, Regulation VII. of 1817.

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Sentence passed by the lower court.—To be imprisoned without irons for three (3) years, from the 11th August, 1854, and to pay a fine of one hundred (100) rupees on or before the 10th September next, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) This case was referred to the law officer of the Court for a *futwa*, who declared the offence charged punishable by *tazeer*. It appears from the record that the prisoner was named by the child's mother, when it was taken away in October, 1851, as the person who had carried off her daughter, and the witnesses, who saw the child in his company on that occasion, have deposed to that fact. The prisoner pleads that he went on a pilgrimage five years ago, two years before the occurrence of the offence with which he is charged was committed. Several witnesses speak to having seen him in his wanderings without the child, and others to his having started as alleged on a pilgrimage. The evidence, as to dates, is uncertain and, contrasted with that for the prosecution, is unworthy of credit. We confirm the sessions judge's sentence.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

DHURM LALL SINGH (No. 16,) RAM RUCHA (No. 17,) BADUL SINGH (No. 18,) GOBIND SINGH (No. 19,) RAMKURN SINGH (No. 20,) HUREE SINGH (No. 21,) SEW RAM (No. 22,) RAMDHAREE (No. 23,) JUGROOP (No. 24,) SEW SUHOY (No. 25,) JAI RAM (No. 26,) HURRUKHDHAREE (No. 27,) AND BEEKOO ROY (No. 28, APPELLANTS.)

Patna. 1854. November 7. Case of DHURM LALL SINGH and others.

Proof of guilt insufficient against three of the prisoners, who were therefore acquitted on appeal.

CRIME CHARGED.—Affray attended with severe wounding of Dhurm Lall Singh (prisoner No. 16,) and Sew Ram Singh (prisoner No. 22.)

CRIME ESTABLISHED.—Affray attended with severe wounding of Dhurm Lall Singh (prisoner No. 16,) and Sew Ram Singh (prisoner No. 22.)

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 7th August, 1854.

1854.

November 4.

Case of DHURM LALL SINGH and others.

Remarks by the sessions judge.—This affray arose out of disputed right to possession of a mangoe tope, situated in mouzah Sohaneepore, close to the civil station of Bankepore. The day upon which the affray took place was stormy and a quantity of fruit had fallen. It was in collecting this, that the collision took place. It is not clearly made out, which party were the aggressors, but two men were severely wounded with swords; and it is proved that all the prisoners were more or less participators in the fight. The wounding of Dhurm Lall Singh, who lost an ear and several fingers, is proved against Sew Suhoy and Jai Ram, and the wounding of Sew Ram is established clearly against Ram Rucha, Gobind and Ramkurn. The remainder of the prisoners fought with *lattees* only, but every one of them aided and abetted in the affray. I convict all of them of the charge laid in the indictment, and in this finding the moulvee of the court concurs. The defence made consists almost entirely of accusations and recriminations of either party one against the other, and the evidence in support of it is in no way exculpatory. The prisoners are accordingly sentenced as below. Jai Ram will suffer five years' imprisonment with labor in irons, his offence is aggravated by the fact of his being officiating burkundaz when the affray occurred. The prisoners, Ram Rucha, Gobind Singh, Ramkurn Singh, and Sew Suhoy Singh, will suffer four years' imprisonment each, and pay a fine of two hundred rupees each, on or before the 1st of September next ensuing, or, in default of payment, they will labor. The prisoners, Dhurm Lall Singh, Badul Singh, Huree Singh, Sew Ram Singh, Ramdharee Singh, Jugroop Singh and Hurrukhdharee, will suffer two years' imprisonment each, and pay a fine of one hundred rupees each on or before the 1st September next ensuing, or, in default of payment, they will labor. The prisoner, Bheekoo, on account of his extreme age, is exempted from labor, but he must also undergo a sentence of two years' imprisonment, since his implication in the riot, by the bad example of his presence and encouragement to the rest, is clearly made out.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court see no reason for interference with the conviction and sentences, passed on the prisoners Nos. 16, 17, 18, 19, 20, 22, 24, 25, 26 and 27, and confirm the same. Not satisfied with the proof of guilt brought against the prisoners, Huree Singh No. 21, Ramdharee No. 23, and Beekoo Roy No. 28, they acquit them and order their release.

PRESENT:

B. J. COLVIN, ESQ., *Judge.*

GOVERNMENT AND CHITBAHUL TEWAREE

versus

MUHEEPUTLAL (No. 8,) RUCHRA ROY (No. 9,) AND RAM SURAN TEWAREE (No. 10, APPELLANTS.)

Shahabad.

1854.

November 7.

Case of MUHEEPUTLAL and others.

Appeal rejected. An omission by the civil surgeon pointed out.

CRIME CHARGED.—Wilful murder of Bullee Tewaree and wounding Chitbahul Tewaree, the prosecutor.

CRIME ESTABLISHED.—Culpable homicide of Bullee Tewaree and wounding Chitbahul Tewaree, the prosecutor.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 21st April, 1854.

Remarks by the sessions judge.—Muheeputlal, prisoner No. 8, is the putwarry of the village, and had formed an illicit connexion with Rajbunsee Koowar, the widow of the deceased proprietor. Rajbunsee having left her house to live with Muheeputlal, the collection of the ryots' rents was in the hands of her son.

A diversity of interest between the mother and son being thus created, the respective parties were at feud, and each striving to obtain payment, the unfortunate ryots were subjected to extra harassment and vexation.

The prosecutor's property having been attached he went to the putwarry, prisoner No. 8, and finding him in the house with Rajbunsee Koowar, remonstrated with him on his intimacy and other matters. The prisoner assaulted him, and on Bullee Tewaree the deceased (who was sitting by at the time) telling them to desist, Muheeputlal with his partizans attacked him, and the former struck him a violent blow on the elbow with a hand stick (called "*hurouttee*"), which broke the bone; ten or twelve days afterwards, Bullee Tewaree came into the station and was admitted into hospital. From neglect and improper treatment, the arm had become swollen and inflamed, the inflammation eventually communicated to the lungs and he died in great pain. The above occurrences are distinctly and clearly related by the eye-witnesses noted in the margin.*

* Purtab Tewaree, Gopaul Tewaree.

The prisoners pleaded an *alibi*, and prisoner No. 8 brings a rambling counter-charge against other parties, but the evidence of the witnesses examined on their behalf, is altogether unsatisfactory and inconclusive.

The *futwa* convicts the prisoners of culpable homicide of Bullee Tewaree, with wounding Chitbahul Tewaree and declares them liable to "*seasut.*"

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November 7.

Case of MUHEEPUT-LAL and others.

This is not an aggravated or heinous case of man-slaughter.

The blow was struck under some provocation, it was not apparently levelled at the head, and the stick was of moderate size. The bone of the elbow appears to have been broken, though the evidence on this point is not as clear as might be wished; the civil surgeon, being unable from the swelling and inflammation of the parts, to state positively whether it was so, and the testimony of the other witnesses, on such a point, not being conclusive.

That death ensued from such a blow is doubtless a matter of surprise, the wound is described by the medical officer *punctured* wound, and it is evident that the *point* of the stick, which is called "*hurouttee*" and is described as extremely hard, must have penetrated the bone (when the elbow was raised to ward off the blow) and the wound must, from improper treatment, have extended itself towards the joint, previous to the man's admission into hospital.

The immediate cause of death was inflammation of the lungs, but the civil surgeon speaks confidently as to the disease being the direct consequence of the inflammation caused by the blow.

On the other hand, prisoner No. 8, is the putwarry of the village, and the evidence goes to shew that his proceedings had been a cause of oppression and harassment to the tenants, enraged and exasperated by the prisoner's conduct, the prosecutor went to complain of an unjust attachment of his property, and finding the prisoner in the house with his paramour remonstrated with him on his illicit connexion and oppressive conduct.

On this provocation, the prisoner struck the plaintiff on the head with a stick, and on the interference of the unfortunate deceased, levelled the blow which terminated fatally.

Sentence passed by the lower court.—No. 8 to be imprisoned without irons for four (4) years from the 21st April, 1854, and to pay a fine of 100 Rs. on or before the 5th May, 1854, in default of payment to labor until the fine be paid or the term of his sentence expire. Nos. 9 and 10 each to be imprisoned without irons for two (2) years from the 21st April, 1854, and to pay a fine of 20 Rs. each on or before the 5th May, 1854, in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The facts detailed above are fully substantiated by the evidence, I therefore confirm the conviction and sentence.

The civil surgeon should have examined the arm after death to ascertain the exact nature of the injury to it.

It has been before pointed out to the sessions judge that appeals should be received on plain paper.

PRESENT:

A DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

GOOLIE SINGH (No. 21,) SURBANATH (No. 22,) BASEENATH (No. 23,) DEEPRAM MAHARA (No. 24,) NAROONATH (No. 25,) GOUR MAHARA (No. 26,) SHEIKH ABID ALIAS ABADOOLLAH (No. 27, APPELLANT,) AND KASHEE SINGH (No. 28, APPELLANT.)

Sylhet.

1854

November 8.

Case of SHEIKH ABID alias ABADOOLLAH and KASHEE SINGH appellants and others.

Sentence reduced of prisoners petitioners, no greater criminality being proved against them, than against the opposite party.

CRIME CHARGED.—1st count, wilful murder of Sheikh Eaz; 2nd count, affray attended with the homicide of Sheikh Eaz; 3rd count, affray attended with assault and wounding; 4th count, being accomplices in crimes contained in the 1st and 3rd counts.

CRIME ESTABLISHED.—Affray attended with culpable homicide.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 9th August, 1854.

Remarks by the sessions judge.—The prisoners Nos. 21 to 26 were cultivating some land said to belong to Raj Chundro Dutt, but which is claimed by the Rajah of Tipperah, when the deceased and prisoners Nos. 27 and 28, who are servants of the Rajah, came and resisted them, and attempted to drive them off the ground. The deceased struck the first blow, a general fight ensued and the deceased was killed by a blow on the head which fractured his skull.

These facts are sworn to by four witnesses, and are admitted by the greater part of the prisoners.

The assessors convict all the prisoners of affray attended with culpable homicide, and in this verdict I concur, but I have sentenced prisoners Nos. 27 and 28, to a greater punishment than the others in consequence of their being the aggressors.

Sentence passed by the lower court.—Nos. 21 to 26 to be imprisoned without irons for four (4) years, and to pay a fine of Rs. 25 on or before the 20th August, or to labor until the fine be paid, or the term of their sentence expire, and Nos. 27 and 28, to (7) seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) On perusal of the depositions of the eye-witnesses, the Court do not discover any greater criminality on the part of the Rajah of Tipperah's people than in that of the other side. The latter, it seems, were ploughing the dis-

1854. November 8. Case of SHEIKH ABID alias ABAD-OOLLAH and KASHEE SINGH appellants and others.

puted land, when the former desired them to desist. The first blow seems to have been struck by the party opposed to the Rajah's people. The sentence therefore passed on the petitioners, Abid No. 27, and Kashee No. 28, is reduced to that passed on the other prisoners, viz. to four years' imprisonment without irons, and a fine of 25 rupees in lieu of labor.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND OTHERS

versus

SONASSEE BAGDEE (No. 1,) AND RAMDHON BAGDEE (No. 2.)

24-Pergunnahs. 1854. November 9. Case of SONASSEE BAGDEE and another.

The magistrate was informed that on the prisoner having been brought to him to confess, he should have recorded the confession himself instead of sending the prisoner to the darogah for the purpose.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor attended with wounding of Warris Chowkeedar, and theft of property worth Co.'s Rs. 4-1, belonging to the prosecutor Dooseeye bearer; 2nd count, No. 1, having in his possession part of the plundered property knowing it to have been acquired by burglary.

CRIME ESTABLISHED.—Nos. 1 and 2, burglary and theft.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 26th June, 1854.

Remarks by the officiating additional sessions judge.—On the night of the 5th of April last, the houses of the three co-prosecutors were broken into. This occurred towards morning and the chowkeedar of the quarter happened to be near the spot at the time. He heard the rattling of brass utensils in the house of the prosecutor Dooseeye bearer and woke the inmates, when Dooseeye's wife remarked that the cats were probably trying to get at the food set apart for the children. The chowkeedar, however, does not seem to have been satisfied with this reply. His suspicions were roused and he went a little aside to watch. Presently he saw three or four persons rush out of the house and Dooseeye after them shouting "stop thief." The chowkeedar confronted and fought with them, and in the encounter received two or three blows on the head from a *lattee*, one of which felled him to the ground. The thieves escaped, but the chowkeedar identified the prisoner Sonassee Bagdee No. 1, and named him to the prosecutors who came up immediately after the scuffle. Information was sent at once to the police *pharee* and the prisoner secured. He confessed before the darogah, but

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Case of SONASSEE BAGDEE and another.

denied before the magistrate. After he had been in jail a day, he sent word to the magistrate by the jailor, that he wished to make disclosures which might lead to the apprehension of his accomplices. He was accordingly brought before the magistrate and not only named his accomplices in the burglaries in question, but detailed other affairs in which he had taken part. The magistrate sent him back to the darogah, with instructions to record his confession in due form and test its genuineness, by an inquiry as to the truth or otherwise of the alleged burglaries. The darogah's reports are on the whole satisfactory on this head. They prove the occurrence of burglaries in the places indicated in the confession, but as the latter did not specify the names of the persons robbed, proof positive of the affairs may be considered wanting, though little doubt can exist as to their actual perpetration. In his second confession before the police the prisoner Sonassee named his co-prisoners, Ramdhon Bagdee No. 2, Shebu Bagdee (sentenced in the case following) Bunmali chowkeedar (acquitted by this court) and Ishur Bagdee (not taken). The prisoner Ramdhon also confessed before the darogah, and both made full and detailed confessions before the magistrate, the former admitting his complicity in six burglaries and two previous convictions, and the latter in three, one being an attempt only. They are both persons of notorious ill-fame and the terror of the neighbourhood in which they reside. The prisoner Sonassee Bagdee makes no defence before this court beyond a denial of the charges and repudiation of his confessions. He calls no witnesses. The prisoner Ramdhon Bagdee pleads a good character denying and repudiating as above. Of the three persons named to his defence, none presented themselves for examination. The sentence passed on the prisoners is in some measure a consolidated sentence, in accordance with their respective confessions.

Sentence passed by the lower court.—No. 1, to be imprisoned with labor and irons for ten (10) years, No. 2, to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) There is no ground for interference with the finding and sentence in this case.

We observe that on Sonassee Bagdee's being brought to the magistrate from the jail, the magistrate, instead of pursuing the course described by him, should have himself duly recorded his confession, and then had it tested by the darogah's inquiries as to the occurrence of the several robberies.

PRESENT:

SIR R. BARLOW, BART. AND B. J. COLVIN, ESQ., *Judges.*

24-Pergunnahs.

1854.

November 9.

Case of SEEBOO BAGDEE.

Case connected with the above.

GOVERNMENT AND OTHERS
versus
SEEBOO BAGDEE.

CRIME CHARGED.—1st count, burglary in the house of prosecutor and theft of property to the amount of Co.'s Rs. 20-11; 2nd count, having in his possession part of the stolen property, knowing it to have been acquired by burglary.

CRIME ESTABLISHED.—Being an accomplice in a burglary and theft.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 26th June, 1854.

Remarks by the officiating additional sessions judge.—This case arises out of the foregoing. The prisoner was arrested on the confession of the prisoner Sonassee Bagdee and Ramdhon Bagdee (convicted and sentenced, as above, but released in the case as per statement No. 8, trial No. 12, of this month). The prosecutor on being interrogated as to the alleged burglary and theft which occurred about three months ago and was not inquired into at the time, admitted the fact and stated that on the night in question he was awoke by the village dogs barking, and getting up with a light, saw that the house had been broken into and the clothes lying strewed about the floor and near the aperture. He is a washerman by trade, several articles of wearing apparel appear to have been found in the house of the prisoner after his arrest by the police, which were identified by the parties to whom they belonged. From some cause, which has not been explained, the prisoner's statement was not recorded at the thannah, but on his coming before the magistrate, he made a full confession of having committed the burglary and theft charged, in company with Sonassee, Ishur and Ramdhon aforesaid, shared in the plunder and taken part on a previous occasion in an attempt to commit a similar offence. The prisoner denies the charge before this court and asserts that he made no admissions before the magistrate. He calls witnesses to character, but the two persons examined on the point pronounce him to be a man of notoriously bad reputation. It is this consideration added to his confession, which is tantamount to an admission of having belonged to a gang of burglars, that has induced me to pass the heavy sentence I have done.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) The prisoner has appealed. He confessed before the magistrate. His witnesses say nothing in his favor. We see no ground for interference.

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November 9.

Case of SEEBOO BAGDEE.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND HURRO DAINEE

versus

ADAREE DAIEE.

Nuddeah.

1854.

November 9.

Case of ADAREE DAIEE.

Conviction upheld, but sentence corrected.

CRIME CHARGED.—Maliciously cutting off the nose of his wife (Hurro Dainee) with a sharp instrument, and thereby maiming and deforming her.

CRIME ESTABLISHED.—Wounding his wife by cutting off her nose.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of Nuddeah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddeah, on the 1st September, 1854.

Remarks by the officiating additional sessions judge.—The prisoner pleads guilty to this charge of cutting and maiming, but justifies the act by an alleged course of abandoned conduct on the part of the injured party, who is his wife. He states in his confessions throughout, before the police, the magistrate and this court, that he had no more than on one occasion had proofs of his wife's infidelity, and that on the night the crime was committed he missed her from his side, and taking a knife with the intent of putting an end to a miserable existence, in the event of his failing to discover the fugitive, went out in quest of her. After roving about for some time he discovered her about daylight in company with a man, who ran off as soon as he saw him. He then tried to reason with his wife and induce her to return home, but she lent a deaf ear to all his entreaties and vowed that she would never retract the step she had taken. He adds that exasperated at her wilful and determined disregard of all reason and entreaty, he threw her on the ground and cut off the tip of her nose with the view, he alleges, of spoiling her beauty. The prosecutrix's account of the affair is very confused and very contradictory, but sufficiently consistent with the prisoner's confessions to induce a strong belief that they are the truth. Beyond those confessions there is no proof of the prisoner's guilt. As these records, however, while they disclose a wanton course of

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Case of ADAREE DAIEE.

unfaithfulness on the part of the sufferer, unmistakeably impute to the prisoner a predetermination to do bodily injury, I have endeavoured to temper the punishment and regulate its extent by the standard of a just retribution.

Sentence passed by the lower court.—Imprisonment with labor and irons for four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner has appealed, but he has confessed throughout the act charged.

The sentence is illegal, imprisonment should have been commuted to fine. The sentence must be amended to imprisonment for four (4) years with labor commutable to a fine of 25 Rs., payable in fifteen days.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT, KUMOLAKANTH DUT AND GOUREE-SUNKUR SURMA

versus

MUSST. AUTOREE (NO. 2,) AND SHEIKH JOYDHUR (NO. 3.)

Mymensingh.

1854.

November 9.

Case of MUSST. AUTOREE and SHEIKH JOYDHUR.

The sentence passed by the sessions judge was not strictly according to law, but held that it could not be enhanced.

CRIME CHARGED.—1st count, knowingly uttering counterfeit coins; 2nd count, having in their possession counterfeit coins knowing them to be such; 3rd count, fraud in gilding silver coins and selling them at the price of gold as being gold.

CRIME ESTABLISHED.—Knowingly uttering counterfeit coins, and having in their possession counterfeit coins knowing them to be such.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 25th July, 1854.

Remarks by the sessions judge.—From the evidence of the prosecutors and witnesses Nos. 11, 12, 13 and 14, it appears that the prisoner No. 3, went to the second prosecutor's house to sell two-half gold mohurs of old coinage, and that No. 2 was also along with him, and that person took No. 3 to the first prosecutor who suspecting from the colour, rubbed one of them on a stone when the silver appeared and he discovered they were counterfeit; they then detained No. 3 for the night to make him over to the police, but he escaped in the morning. No. 2, on her apprehension stated before the police, that No. 4 (of the acquittal statement) had at first given her a gold quarter piece and a half piece to sell for him, which she carried to the second

1854. November 9. Case of Musst. Autoree and Sheikh Joydhur.

prosecutor's house, and sold there, and they promised to pay the price the next day; that No. 4 again gave her five-half and one-quarter pieces to sell, and the next day, she and No. 3 went there with them; that the second prosecutor then carried them to the first prosecutor's when they took four-half pieces from her, and also snatched a half and a quarter piece, saying the price would be paid to No. 3, and then confined them letting her however go shortly after; that she was not aware that they were counterfeit as No. 4 said they were genuine. Prisoner No. 3 also admitted having accompanied No. 2, to sell gold coins which No. 4 gave her to sell; that the prosecutors confined them both, but released No. 2 in the evening, and let him go in the morning and he did not run away, and that the quarter-piece found at his house was one of those No. 4 gave them to sell. In the foujdarry and before this court, prisoner No. 2 adhered to her confession that No. 4, gave her the coins to sell which she in company with No. 3 carried to the prosecutors for sale. Before the magistrate, prisoner No. 3 admitted having gone along with No. 2, but that he himself sold nothing. In this court however, he denied the charge, saying that he was compelled by ill-treatment to make a false confession before the darogah and he was tutored by a burkundaze to repeat it before the magistrate. The witnesses cited by the prisoners knew nothing in their favor while, they for the most part stated that they heard they had sold counterfeit gold coins. The *futwa* of the law officer convicted them on the first and second counts, in which verdict I concurred. The magistrate should have, I think, dealt with the case himself under Section 11, Regulation XVII. of 1817.

Sentence passed by the lower court.—To pay a fine of (24) twenty-four Rs. each, or, in default, to be imprisoned for a term of six months.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The sessions judge has already been told, from the English department, that the committal and conviction on the charge of knowingly uttering counterfeit coin was wrong. He has observed that the magistrate should have disposed of the case himself, but the magistrate could not have done it had the charge of uttering been correct; moreover the sessions judge, having convicted of uttering, has punished as for possessing counterfeit coin only, but the sentence also is wrong even upon the conviction of having counterfeit coin in possession, for the fine should have four times the nominal value of the coin attempted to be passed. As we cannot enhance the sentence on appeal, we only point out to the judge his misapprehension of the law for his future guidance.

The appeal is rejected.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND JUMOONA KUSBEE

versus

ROHOMUTOOLLAH (No. 5,) SHEIKH MEAJAUN KHOLEEFA (No. 6,) AMEER MEER (No. 7,) AND LALL MAHOMED SIRCAR (No 8.)

Mymensingh.

1854.

November 9.

Case of ROHOMUTOOLLAH and others.

The prisoners' appeal was rejected, the proof against them being satisfactory.

CRIME CHARGED.—1st count, committing dacoity in the house of the prosecutrix and plundering therefrom cash Rs. 83 and property consisting of gold and silver ornaments, brass and *cassa* utensils, cloth, a box, a *petara*, &c., valued at Rs. 185-9-9; 2nd count, Nos. 5, 6 and 7, knowingly receiving and possessing property obtained by the above dacoity; 2nd count, No. 8 being an accomplice in the above 1st count; and 3rd count, privity to the above 1st count.

CRIME ESTABLISHED.—Prisoners Nos. 5 and 8, dacoity, No. 6, dacoity and knowingly receiving property obtained by dacoity, and No. 7 knowingly receiving property obtained thereby.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 22nd August, 1854.

Remarks by the sessions judge.—From the evidence of the prosecutrix, Jumoona Kusbee and her witnesses, and the admission of prisoners, Nos. 5, 6 and 8, before the darogah, and that of Nos. 5 and 8, before the magistrate, it appears that a party of professional *latteeals* had, a few days before the occurrence, halted near the house of No. 6, for the purpose of obtaining employment with some of the landholders who were at enmity with each other; that on the night of the occurrence the prisoners and others about thirteen or fourteen persons armed with *lattees* proceeded to the bazar at Shagunge and attacked the house of the prosecutrix; that some of them held her down and prevented her giving the alarm, while the others after lighting two torches broke open a chest, and cleared it of its contents, two or three at the same time keeping watch outside, they then decamped with the spoil. The matter was immediately reported to the police, and the darogah repaired to the spot and commenced his inquiries. The prosecutrix recognized none of the robbers, but gave a description of one of them, viz., No. 6, which led to his apprehension. The darogah also arrested No. 5, who lived with No. 6, and upon being questioned admitted he accompained Nos. 6, 7, 8 and others for the purpose of committing the dacoity that the plundered property was at No. 6's house, and he gave

1854. November 9. Case of ROHOMUTOOLLAH and others.

up some stolen property. No. 6, on being apprehended, also admitted having committed the robbery with the other prisoners, and the *latteeals* who halted near his house, and gave up his share of the property which was at his house and pointed out other property which was concealed in that of No. 7. No. 8, was harboured by one Lochun Biswas and his people and when the police apprehended him, they attacked the darogah and rescued him. On his apprehension he confessed having committed the dacoity along with the other prisoners and the *latteeals*, and received 6 rupees for his share out of the sum of 83 rupees plundered, and that the rest of the articles were left with No. 6. No. 7 denied the charge and resorted to *alibi* for his defence, but he could not account for the articles which were found in his house, while the other prisoners implicated him as one of their party. Before the magistrate Nos. 5 and 8 repeated their mofussil confession; No. 6 repeated his mofussil admission and urged that from enmity, the darogah had thrown some of the prosecutrix's property into his house and then recorded that it was recovered from him. No. 7 also denied the charge. In this court all the prisoners denied the charge, and No 5 claimed the property, viz., a *dhootee* as his own. No. 6 urges enmity with the police. No. 7 *alibi*, and No. 8 ill-treatment by the darogah. The recovery of the several articles has been fully proved as above recorded, though there are some minor discrepancies in the evidence of the witnesses as to the identification of some of the articles in this court as compared with that before the magistrate. The prosecutrix it appears at first mentioned that she lost 50 rupees, but she filed a supplementary list that the amount plundered from her house was 83 Rs., and that there were other small articles which she in the first instance omitted in the list from want of memory, but which she afterwards on recovery distinctly deposed to. The main point however that a dacoity was perpetrated in her house by a party among whom Nos. 5, 6 and 8, confessed to the crime and implicating each other, and the recovery of a great portion of the plundered property from them has been clearly made out, while the defence offered by them in this court failed to exculpate them from the charge. I therefore convicted Nos. 5 and 8 of dacoity and No. 6 of dacoity and knowingly receiving plundered property, and No. 7 of knowingly receiving such property. No. 6 was before punished for theft. The case was tried under Act XXIV. of 1843.

Sentence passed by the lower court.—Nos. 5 and 8 to be imprisoned with labor and irons each for the period of ten (10) years. No. 6, ditto for twelve (12) years, and No. 7, ditto for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We see no reason to interfere on appeal by the prisoners, the confessions of Nos. 5 and 8, before

1854.

November 9.

Case of ROHOMUTOOLLAH and others.

the police and the magistrate, and the evidence to the production of property from the other prisoners, Nos. 6 and 7, and its recognition by the prosecutrix and the witnesses named by her, when contrasted with the defence, which is in no way supported, justify the conviction and sentence passed by the sessions judge.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

SOOKHMOYEE AND GOVERNMENT

versus

ANUND CHUNDER ROY.

24-Pergunnahs.

1854.

November 9.

Case of ANUND CHUNDER ROY.

Prisoner convicted of the wilful murder of his brother by poisoning him with aconite, in doing which he also nearly killed several other members of the family, sentenced to death.

CRIME CHARGED.—1st count, wilful murder of Poran Roy by administering to him a poisonous root or substance called "*kath beesh,*" or aconite; 2nd count, attempt to murder Sookhmoyee Burmonee, prosecutrix, Bemola Burmonee, and Pearee Burmonee, by administering to them a poisonous root or substance called "*kath beesh,*" or aconite.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 23rd September, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Anund Roy, is charged with the wilful murder of his brother, Poran Roy, and the attempt to murder Sookhmoyee Burmonee, the prosecutrix, Bemola Burmonee and her daughter, Pearee Burmonee, by administering to them in food a poisonous root or substance called *kath beesh, anglice* aconite, and pleads *not guilty* to the indictment.

The following is a history of the tragical events, out of which this trial has arisen. The prisoner is the younger brother of the deceased and contracted an intimacy with a Kowra woman of the name of Shama, much to the annoyance of the deceased and the females of the family, who never lost an opportunity of upbraiding him for his defection from his social position. This connection also entailed on him extraordinary expences, to meet which he, from time to time, received assistance from his brother, Poran. It is asserted that after a time Poran refused to make further advances unless the prisoner consented to sell him his share of the patrimony. This was done, and a conveyance of the property duly executed and lodged with a mutual friend. Owing to this transaction, which was never particularly agreeable to the prisoner, and the discreditable connection he had formed, the seeds of discord

Dwarkanath Roy, witness No. 21.

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Case of ANUND CHUNDER ROY.

appear to have been sown in the minds of the two brothers, and the younger began to entertain, towards the elder and his family, feelings *akin* to deadly hatred, which at times he was at no pains to conceal. It was in this state of mind that he conceived the idea of murdering the whole family, and with that view purchased about an ounce of aconite root, as well known to natives as ourselves to be the most destructive of poisons. He repaired to his brother's house on the day of the murder and partook of the morning repast, apart from them of course, being an outcaste from the family. He observed, however, that a portion of the vegetable broth used on the occasion was not consumed, and saw it set apart for the evening meal in a vessel hung up in the cook-room. After eating, he appears to have gone away and was seen pounding some substance on a brick, which, it will be hereafter shown, was the aconite root in question. When this operation was completed, the prisoner returned to his brother's house, and on pretext of getting some fire for smoking went into the kitchen and deposited the powder in the utensil, which contained the vegetable broth. When the hour for the evening meal arrived, the prisoner contrived to be present, and though pressed to eat, declined doing so. The persons who partook of the repast were the deceased, Poran Roy, his wife, Sookhmoyee Burmonee, his aunt Bemola Burmonee, and his cousin Pearee Burmonee. The former ate first, and probably got the largest share both of the broth and the poison. He was taken ill almost immediately, complained of a burning sensation in his throat and stomach, vomited once and expired during the night. The three women were seized with the like symptoms and soon fell into a state of insensibility, but recovered after the lapse of several hours, the quantity of poisonous matter swallowed by them, having proved insufficient to destroy life. Early in the morning the prisoner apprised some distant relatives and friends of the deceased, who lived close at hand, of the death of his brother, Poran, and the dangerous state of his female relations, and alleged that these events were the result of cholera. On learning from him that the occurrences took place during the night, they upbraided him for his neglect in not immediately applying to them, and according to his statement, bound and beat him, accusing him of having compassed by some unlawful means the calamitous events that had taken place. In this state of things, the pri-

Gobind Laha, Benia, witness No. 13.

Kashinath Ghose and Prem Chand Ghose, witnesses Nos. 14 and 15.

Sookhmoyee Burmonee, prosecutrix.
Bemola Burmonee, witness No. 11.

Tara Chand Mal, witness No. 17.
Amunt Ram Roy Sen, witness No. 18.

Obhie Churn Roy, witness No. 19.
Dwarkanath Roy, aforesaid.

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November 9.

Case of ANUND CHUNDER ROY.

soner alarmed and conscience-stricken was determined to be before hand with his accusers, and repairing to the thannah, as soon as the deceased's body was removed for the purposes of cremation, laid a criminal information against the witnesses Dwarkanath Roy and others, and charged them with having beaten Poran Roy to death. The consequence of this move was, that the ceremony of burning was staid, and the body brought back to the nearest police station. Here some inquiry was made, and certain interrogatories put by the subordinate police officer to the parties concerned, particularly to Omesh Roy, son of the deceased, an intelligent looking boy of between eight and nine years old. This lad who was examined on oath before the magistrate and told the same tale, stated that he saw the prisoner go into the kitchen and put something into the vessel, which contained the broth; which disclosure, taken in connection with the rumour circulated by the prisoner that his brother had died of cholera, turned the tide of suspicion against him. The body was brought back to Poran Roy's house whither the darogah had proceeded to hold the inquest and the suspicion against the prisoner being further confirmed from the inquiries made by that officer, he was taken into custody, and then and there made a full, free and detailed confession of having poisoned his brother and his family, with the reasons which induced him to commit the deed, and the manner in which he achieved it. The purport of this confession has, in a great measure been anticipated by the recital I have above given.

Fukir Muhumud, witness No. 26.

Gulzar Singh, jemadar, witness No. 27.

Aforesaid witnesses Nos. 18, 19 and 21.

Shookmoyee prosecutrix, aforesaid.
Bemola Burmonee, witness No. 11, (ditto.)

Sudanund Ghose, witness No. 1.
Biprodas Burnick, witness No. 2.
Das Churn Das, witness No. 5.
Ramdhun Ghose, witness No. 6.

The testimony of the civil surgeon describes the effects of aconite on the human subject, and he has recorded it as his opinion, on the *post mortem* examination held on the body of Poran Roy, that he is "unable to account for death on any supposition other than that the deceased had swallowed some vegetable poison, as for instance aconite." The symptoms mentioned by Mr. Strong were generally observable in the deceased and the three women after partaking of the poisoned food.

F. P. Strong, (Mr.) witness No. 3.

The prisoner denied the charge before the magistrate, and though admitting that he had made a confession before the police, alleged that it had been extorted under threats and ill-usage. On the magistrate asking him if he had any witnesses

to prove that the police had resorted to unlawful means to obtain his confession, he replied in the negative. 1854.

The only defence the prisoner makes on the trial is, that he is the victim of a conspiracy got up against him by the witnesses, Dwarkanath Roy and others, who murdered the deceased. He cited some witnesses to character, but only one person appeared and he described him as a man of bad repute.

November 9.

Case of ANUNDCHUNDER ROY.

The *futwa* of the law officer acquits the prisoner of murder, but finds him guilty of mixing poisonous matter in food, with intent to kill Poran Roy and his family, from partaking which the said Poran Roy died, and the woman Sookhmoyee, Bemola and Pearee became insensible, and declares him liable to discretionary punishment by *akoobut.*

I cannot concur in this finding, presenting as it does the anomaly of a distinction without a difference. If the prisoner is guilty of any crime, that crime is murder. He admits that his object was to destroy life, and he effected that object by the means made choice of, viz., poison, and I cannot understand why this killing should be designated "no murder." The chain of evidence against the prisoner is complete. He confesses that he made up his mind to poison his brother and family, on account of their offensive conduct towards him in the matter of the woman, Shama, and purchase of the patrimonial property, and points out the individual from whom he procured the poison. This person admits that he sold some aconite to the prisoner, on the plea that he required it for medicine combined with other ingredients, for which he promised subsequently to call, *but never did.* On the day of the murder, the prisoner was seen alone pounding some substance on a brick. He was subsequently observed to enter the kitchen, in which the poisoned food was kept. He was present when the family partook of the evening meal, and though pressed to eat, declined to do so. He witnessed the distressing symptoms evinced by his brother after swallowing the poison, and refused to go for assistance when besought by his sister-in-law, Sookhmoyee. He circulated the rumour that the deceased had died of cholera, and when suspected of foul play by those who knew his character, he forestalled his accusers and charged them with the murder. I have seldom seen a clearer case and evidence better arranged, and I think it due to the magistrate to record thus publicly my sense of the admirableness of the commitment. A conviction of murder by poison is not of frequent occurrence, particularly as in the present instance, where its indications in the human subject cannot be ascertained by chemical analysis. I convict the prisoner of a cold-blooded, deliberate, atrocious murder, and seeing nothing in his case to render him an object of mercy, recommend that he be sentenced to suffer death.

P. S. The boy, Omesh Roy, was not examined on the trial,

1854. owing to his extreme youth, and ignorance of the nature and obligations of an oath.

November 9.

Case of ANUND CHUNDER ROY.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) The evidence in this case, as detailed in the letter of reference, affords the clearest proof against the prisoner. Though the fact of his having put something into the earthern pot, which contained the food which had been poisoned, could not be proved in consequence of the child, who saw the prisoner in the act, being ignorant of the obligation of an oath; yet his mother has sworn that her boy mentioned to her as soon as she had recovered from the effects of the poison, which she also took with the food, that he saw the prisoner enter the cook-room and heard the noise he made when moving the cooking-pots. The prisoner confessed in the moffussil, and before the magistrate admitted that he did confess, adding however it was by compulsion; when called upon for evidence to establish this plea, he said he had none.

The prisoner pointed out the person from whom he purchased the aconite, and that individual has been made a witness in the case, and has proved the purchase. On being offered the food of which the deceased and his other relatives partook, the prisoner refused to eat it. He refused also to call for assistance when they were taken ill, and gave two different statements as to the cause of his brother's death, first ascribing it to cholera and then charging the relatives before the police with having killed him. Upon consideration of all the circumstances brought to light, the well connected chain of evidence and the prisoner's own defence on the record, we see no reason to doubt his guilt, and therefore sentence him, as proposed by the sessions judge, to death.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT

versus

KOLIMOOLLAH (No. 4, APPELLANT,) AND SHEIKH ROHIMOOLLAH (No. 5.)

Sylhet.

1854.

November 10.

Case of KOLIMOOLLAH and SHEIKH ROHIMOOLLAH.

The prisoners were acquitted, the alleged perjury having been committed in the preliminary investigation under Clause 6, Section 2, Regulation III. 1812.

CRIME CHARGED.—Perjury, in having on the 28th February, 1854, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the officiating magistrate of Sylhet, that on the 3rd Falgoon, at Zindabazar in Sylhet, about one *pahar* A. M., Ramnarayn Shah struck me with his own hand with a sandal three or four times on my back, and in having on the same day again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the said officiating magistrate, that Ramnarayn Shah never beat me in Zindabazar; the assault is untrue, such statements being contradictory of each other on a point material to the issue of the case, and No. 5, perjury in having on the 28th February, 1854, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the officiating magistrate of Sylhet, that I saw Ramnarayn Shah by means of his servant Oda forcibly carry away the plaintiff, and Ramnarayn Shah himself beat him and in having stated that the assault took place at Zindabazar in Sylhet, and in having on the same day again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the said officiating magistrate, that I heard from Kolimoollah the plaintiff, of his having been in Zindabazar assaulted, and that I did not see Ramnarayn Shah beat Kolimoollah, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. T. P. Larkins, officiating magistarate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 2nd May, 1854.

Remarks by the sessions judge.—The prisoner Kolimoollah is charged with having, on the 28th February, deposed on oath that one Ramnarayn beat him with a shoe and with having sworn on the same day that he was not beaten by the said Ramnarayn. He pleaded guilty before this court and voluntarily confessed to the magistrate that he had been instigated by Ramnarayn himself to make the false charge, as he was anxious to come to Sylhet, and could not do so for fear of arrest by the civil court, whereas he would, if summoned by the magistrate, be exempt from arrest.

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Case of Kolimoollah and Sheikh Rohimoollah.

Of the truth of this story there is no evidence, but if true, the prisoners' guilt would not be thereby lessened.

Rohimoollah swore that he had been a witness to the assault of Kolimoollah by Ramnarayn, and he afterwards swore that he had not seen any assault. The two contradictory statements are proved, and the prisoner could make no defence.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor in irons.

On perusal of the above remarks the Court,—(Present: Messrs. A. Dick and B. J. Colvin) recorded the following resolution No. 817, dated 25th August, 1854.

The Court, having perused the papers above recorded, observe that, from the record sent, and likewise from the statement of the magistrate in the calendar, and of the sessions judge in his monthly abstract, they are unable to discover whether the party falsely charged by the prisoner, Kolimoollah, was ever summoned and put on his trial. It has been held by the Nizamut Adawlut in the case of Rambux Lall and Jeetoo Koombar and others, pages 170 and 185, of Nizamut Reports for February, 1854, that the charge of perjury cannot be preferred against prosecutors or witnesses, founded on their depositions recorded, before any one is on trial. The Court, therefore, direct that the sessions judge ascertain and inform them whether Ramnarayn was summoned and put on his trial, and also forward to this Court the whole of the papers on record in the case of the petition of the prisoner, Kolimoollah They further request the sessions judge to intimate if there were any civil process out against Ramnarayn at the time, which could have given cause to the false complaint of prisoner, as averred by him. The sessions judge will put both the prisoners, Kolimoollah and Sheikh Rohimoollah on bail, until final orders be passed by this Court.

In reply to the above resolution the following letter No. 45, dated 12th September, 1854, was submitted by the sessions judge.

I have the honor to acknowledge the Court's resolution No. 817, dated the 25th August, 1854, and to submit all the papers connected with the case of Kolimoollah and others.

I also submit the proceedings held by me on the trial of Ramjoy Surmah mooktear, connected with the same case, who has appealed, and beg to inform the Court that I have put him on bail as well as Kolimoollah and Rohimoollah.

A civil process was out against Ramnarayn, when the false charge was preferred, and there is little doubt that under the advice of his mooktear he suborned Kolimoollah to make it, but there was not legal evidence enough for his conviction.

Ramnarayn does not appear to have been actually under trial when the false depositions were given, as the prosecutor and his witnesses broke down at the commencement of their conspiracy;

but a judicial proceeding had been held and in respect to that, depositions were material. 1854.

When the trial of the prisoners, Kolimoollah and Rohimoollah, was held by me, the Court's decisions for the month of February, had not been received by me, and now that I have read them, I trust the Court will excuse me for respectfully hoping that they will be pleased to re-consider their decision, as the point is one of very great importance.

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The Court have ruled that a false deposition on oath cannot be considered perjury, unless some one should at the time be on trial or be put on trial in consequence of it, but the provisions of Regulations II. of 1807 and XVII. of 1817, do not require this. They only require that some judicial proceeding or some case should be before the court, and that with reference thereto a false deposition should have been given. They do not require that any one should be actually under trial.

Regulation VII. of 1811, Section 5, has in no respect modified or altered the provisions of Regulation II. of 1807. It has only given a power to the magistrate, which he had not before, to punish malicious or vexatious charges, whenever he shall consider it proper to do so, but it is clear that in cases calling for a greater punishment than he can award, that he has still the power of commitment on a charge of perjury, and this point has been so decided three times by the Court of Nizamut. I beg leave to refer the Court to Construction 233, January 29, 1816.

Granting that in many malicious and false charges the sentence within the power of the magistrate is sufficient for the ends of justice, there are some, where it would be clearly inadequate, as when a man maliciously charged a woman falsely with a want of chastity, or a man with having committed an unnatural crime; in such cases I conceive the highest penalty for wilful perjury, would not be too severe, and it would surely be an insufficient reason for awarding only six months, that the parties so maliciously charged had not in consequence been put upon their trial, for the perjury would have been completed.

If the Court adhere to its decision in regard to prosecutors, I would respectfully submit that the provisions of Section 5, Regulation VII. of 1811, are in no respect applicable to witnesses giving false depositions in support of a false charge. In regard to them, no option of punishment has been granted to the magistrate, and he must, it appears to me, either commit them to the sessions on a charge of perjury or allow them to escape unpunished.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The definition of perjury is laid down in Clause 1, Section 4, Regulation II, of 1807, that it must be a false deposition on oath, &c., relative to some judicial proceeding, civil or criminal, and upon a point material to the issue

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thereof. *Now in this case, the preliminary investigation prescribed by Clause 6, Section 2, Regulation III. of 1812, had alone been gone into, the case had not assumed the character of a judicial proceeding against the accused. No process having been issued, Construction 233 and the precedents referred to in it, do not therefore bear upon this case.

We observe, with reference to the concluding paragraph of the judge's letter No. 45, that witnesses, who depose falsely cannot, under similar circumstances to those in this case, be punished for perjury, although it may be a question whether they are not punishable for conspiracy.

With reference to the above remarks, we acquit Kolimoollah and Rohimoollah and direct their release.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

RAMJOY SURMAH.

Sylhet.

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See preceding Case.

CRIME CHARGED.—1st count, being accomplice in subornation of perjury of Kolimoollah and Rohimoollah; 2nd count, being privy to the facts of subornation of perjury.

CRIME ESTABLISHED.—Being accomplice in the subornation of perjury of Kolimoollah and Rohimoollah; 2nd count, being privy to the facts of subornation of perjury.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 18th August, 1854.

Remarks by the sessions judge.—One Ramnarayn wished to come to Sylhet and as he was evading a warrant of arrest from the civil court, he suborned one Kolimoollah to charge him with assault and some witnesses to prove the fact. The matter, however, transpired, Kolimoollah admitted that he had given a false deposition and so also did one of the witnesses and they were convicted before me of perjury in May last. In June the acting magistrate took up the case against Ramnarayn, the prisoner, who is his mooktear, and a third party, and recording his opinion that it was unnecessary to commit them to the sessions, punished them himself. On appeal his conviction was quashed, as he had no power to punish any one in a case in which other implicated parties had been committed to the sessions. On going through the papers, however, I did not think there was sufficient

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evidence to convict Ramnarayn and Kishenchurn the third party, so I released them and directed him to commit the prisoner Ramjoy Surmah to this court.

That the original charge made against Ramnarayn by Kolimoollah was a false one, is not denied by Ramjoy Surmah the prisoner in the present case, and its falsehood is proved by the proceedings of this court held on the trial of Kolimoollah and another, but the prisoner denies any wilful participation in the crime.

Bhoolanath Dhur, witness No. 2, deposes that the prisoner Ramjoy brought Kolimoollah and others to him and said they would give him a power of attorney, and that he must get their depositions taken and obtain leave for them to go home, but that as he knew the prisoner Ramjoy to be the agent of Ramnarayn, he was suspicious and wondered how he could be employed in a case against him. That he, the witness, is the mooktear of one Ramnarayn, who had the decree against Ramnarayn, and that the prisoner had told him that Ramnarayn could not be arrested by civil process if summoned in upon a criminal charge. This witness has been consistent in his story before the magistrate and this court, and his evidence has been in no respect rebutted.

Hurchunder Dam, witness No. 3, deposed that Kolimoollah in his presence told Ramjoy Surmah, the prisoner, that Ramnaryan had sent him to prefer a false complaint against himself, and the prisoner thereupon asked him if he had brought any instructions to him from Ramnarayn, and that upon his answering in the negative, the prisoner said he would not believe him. That Kolimoollah, however, constantly came to the prisoner's house, and that on a particular occasion he came with the prisoner and a peadah of the magistrate's court and pointed out Kishore Mallee, as a witness in the case brought by Kolimoollah against Ramnarayn; Gore Singh Peadah, witness No. 4, deposes to his having accompanied the prisoner Ramjoy and Kolimoollah to serve a notice upon Kishore Mallee which he did, and he further added that the prisoner Ramjoy or Kolimoollah accompanied the witnesses in Ramnarayn's case to the magistrate's nazeer. Before the magistrate he distinctly declared it was the prisoner Ramjoy who reported their attendance to the nazeer.

Doorganath Joogee deposes to witnessing the serving of the process and declares Ramjoy was present; Kishore Mallee deposes to his having been sent by Ramnarayn to the prisoner Ramjoy Thakoor with money and a letter, and to the presence of Kolimoollah at the prisoner's house, and the evidence of these witnesses satisfies the mind that the prisoner Ramjoy was knowingly and wilfully an accomplice in the subornation of Kolimoollah in the false charge made by him against his master Ramnarayn.

The prisoner in his defence urges that the witnesses are ene-

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mies of his. That his trial by the sessions court is illegal, and that his innocence is proved by the fact of his having told the seristadar of the magistrate's court of the false charge was being made against his master Ramnarayn.

He did not attempt to prove the existence of enmity on the part of the witnesses for the prosecution, and did not even advance the plea before the magistrate, and his three witnesses to the fact of his telling the seristadar of the plot cannot be credited. They are three low fellows not likely to have been admitted, as they state they were, at night into the seristadar's house, and do not agree in their story, one says the room which he called the cutcherry was full of people, and a second says, there were only a few persons present, and that they distinctly heard the prisoner say that if the seristadar would not report the story to the magistrate, he, the prisoner, would. The third one slightly differed in saying he stayed outside the room, and that the story was to be told to the company.

If there were any truth in this story, the prisoner would have summoned the seristadar, a course which he knew from his practice as a mooktear to be the right one; but this he omitted to do, knowing doubtless that the story would be denied. The foundation of the story is this. The seristadar reported to the magistrate the rumours which he had heard of the falsehood of Kolimoollah's charge, but omitted to name the parties from whom he heard them, and the prisoner, therefore, taking advantage of this circumstance, endeavoured to prove that he was the party who had given the seristadar the information.

One assessor convicts the prisoner of the charges made against him, but there are extenuating circumstances, while the second considers the evidence insufficient for conviction.

Sheikh Kolimoollah, an important witness against the prisoner, committed a bare-faced perjury by denying that he knew the prisoner, or had given the deposition against him before the magistrate, and he has therefore been committed by me for trial.

Sentence passed by the lower court.—Imprisonment without irons for (4) four years, and to pay a fine of 200 rupees, on or before the 1st September, 1854, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) This prisoner is acquitted, with reference to the remarks in the case of Kolimoollah and Rohimoollah. As the main charge of perjury has broke down, there can be no conviction of its subornation.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT
versus
KALLYSHURN SURMAH MOZOOMDAR (No. 4.)

Rungpore.

1854.

November 10.

Case of KALLYSHURN SURMAH MOZOOMDAR.

Prisoner convicted of issuing a forged potta, by filing it in the sudder ameen's court, sentenced to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—Forgery in having fabricated a deed, (a *putnee patta* for four annas share of Kismut Bholta) which was filed on the part of Ramkoomaree the wife of the prisoner, in the sudder ameen's court of Bograh, as a material document in a case instituted by Birmomoi against the said Ramkoomaree; 2nd count, having filed in the sudder ameen's court of Bograh the aforesaid *putnee patta*, knowing it to have been forged.

CRIME ESTABLISHED.—Having filed in the sudder ameen's court of Bograh, a *putnee patta*, knowing it to have been forged.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 11th August, 1854.

Remarks by the officiating sessions judge.—The first charge was not established against prisoners Nos. 4 and 6, nor the sole charge against prisoner No. 5. I need therefore only mention the evidence against prisoner No. 4, on the 2nd charge of knowingly issuing a forged *patta.*

Birmomoi Dasseea a widow (witness No. 6,) owner of a four anna-share in Kismut Bholta, a village about ten miles from Bograh, resided with her mother Kumul Money Dasseea at Raikali, a village eighteen miles from the station. On the 18th Bysack, 1259, she there received a message from Ramgobind Dass Kobiraj witness No. 9, farmer of her Bholta estate that a *patta* had been executed at Bograh in her name and registered granting the said estate in *putnee* to the wife of prisoner No. 4. She next morning came into Bograh (Maltinugur) went to the house of Kishtonath Buksee witness No. 5, fell at his feet and begged his aid without which she was utterly ruined. Kishtonath is a very old man of considerable wealth and some station, had formerly held her estate in farm, which farm he had of his own accord resigned to her in 1256, five years before the lease was out. He took up her case and directed a petition to be filed in the joint-magistrate's court, but as his naib and others went to present this, they were desired to postpone doing so by the collectory serishtadar who thought the affair might be arranged, various attempts to settle it appear to have been made, but without success, and on the 12th May, (the *patta* being dated 15th

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Bysakh or 26th April,) a complaint was made to the joint-magistrate which after some evidence had been taken was dismissed, the document not being before the court; Birmomoi then instituted a suit to annul the *patta* in the sudder ameen's court, and in the defence, the prisoner No. 4, on the part of his wife, filed the alleged forged *patta*. The sudder ameen decreed the case in plaintiff's favor and considering the *patta* a forgery made over prisoner, No. 4, to the joint-magistrate, who committed him and the other prisoners on the charges mentioned.

On the trial it was proved by witnesses Nos. 7 and 8, and Birmomoi herself (who attended the court in a *doolee*, her identity being admitted by the prisoners) that she was at Raikali in her mother's house, nine coss from Bograh, when on the 18th Bysakh 1259, she received a message from Ramgobind Dass witness No. 9, informing her of the execution of a *patta* at Bograh in her name, that she had been there uninterruptedly for a long time before that date, and that she did not leave her mother's house till the day after receiving the said message.

Witnesses Nos. 4 and 5 prove that on being told by witness No. 10, of the execution of the *patta*, witness No. 5 desired prisoner No. 4 to be called, and on his coming, asked him why he had done such a thing, to which prisoner replied I have done what I have done, and offered to give up all the papers, to which witness No. 5 replied, he would have nothing to do with such injustice; that Birmomoi came to witness No. 5, on hearing of the *patta*, through witness No. 9, and begged him to aid her which he agreed to do, and witness No. 4, his naib was accordingly directed to take the necessary measures. These two witnesses also state that some days before the 15th Bysakh 1259, prisoner No. 4 came to witness No. 5, and borrowed a *dakhila* from him bearing Birmomoi's signature, alleging he wished to compare it with the signature on a *patta* of some lands he intended taking from her. This *dakhila* which was returned to witness No. 5, is not now forthcoming and the story being somewhat improbable, and not mentioned in the first trial, was set aside by the law officer and myself in forming our opinion in the case.

Witness No. 9 proves that on hearing of the execution of the *patta*, he sent notice to Birmomoi at Raikali who came over next day.

Witnesses Nos. 4, 5, 9, 10 and Trilochun Biddeabhoosun prove that a complaint was about to be made in the joint-magistrate's court, immediately on Birmomoi's hearing of the execution of the *patta*; that various attempts were made by influential persons at Bograh quietly to settle the affair, prisoner No. 4, being a brahmin and pundit, but without success, and that then the complaint was made on the 12th May.

Doorganath and Govindnath *vakeels* prove the reception of the *patta* from prisoner No. 4, and their filing it in Birmomoi's case.

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Case of KALLYSSUAN SURMAH MOZOOMDAR.

The *patta* is written in a 4-rupee stamp paper, Birmomoi's name is written in a shaky hesitating manner, some of the letters retouched apparently. Birmomoi swears it is not her signature. It resembles her acknowledged signature on other papers in the shape of the letters, but not in the freedom with which they were written. The *patta* purports to grant the estate in *putnee*, in consideration of a cash payment of 300 rupees down and a yearly payment of 6 rupees in addition to the sudder jumma of 75-8.

The prisoner in his defence asserts that the *patta* was granted to him by Birmomoi, who herself signed it in his house at Maltinugur on the 15th Bysakh. He calls seven witnesses. Ain Mahomed No. 12, the writer of the disputed *patta* is a ryot and servant of prisoner No. 6, lives four coss from Maltinugur (Bograh.) Birmomoi herself called him and walked into Bograh with him and some of the other witnesses, without any relations or servants with her; they went to No. 4's house, he wrote the *patta* in the adjoining house, Ramkomul Kobiraj's, and it was signed in No. 4's house by Birmomoi to whom Ramkoomaree, No. 4's wife, gave the money and then she went out on the road accompanied by the other ryots, he cannot say whether the rupees were tested when paid, the stamp paper for the deed he said before the joint-magistrate was bought by one Bheema the day before, in his deposition to the sudder ameen he said he knew not who bought it.

The appearance of this witness was very much against him, he dare not look up when giving his evidence, which he did in an uncertain sort of way, as if afraid of contradicting something he had said.

Shonatun chowkeedar, witness No. 13, lives in Satrooka five coss from Bograh held in farm by prisoner No. 4, by whose servant he was called, and on arrival told he was wanted to witness the *patta* which he did.

Ajoo chowkeedar No. 14.—He had come to give his weekly report to the thannah and before going home, went to prisoner No. 4's house, saw a lot of people there and heard that Birmomoi was giving a *putnee* of Bholta to prisoner No. 4; is chowkeedar of Bholta and went to prisoner No. 4's house because he is the farmer of Rughoonath Chuckerbuty's share of that village. Birmomoi took the rupees and gave them to one Moocha, they were tested by Ain Mahomed witness No. 12, can't explain why he said at the foujdary that the writing and exchange of deeds were done at one place, here in different places.

Toojaree No. 15, a resident of Bholta.—Birmomoi called him and he accompanied her to Bograh, where he witnessed the execution of the deed, went to register it and saw Birmomoi start home accompanied by a man whose name he does not know, contradicts himself regarding Birmomoi's residence, &c., and cannot explain why he told the joint-magistrate that he never

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saw Birmomoi again that day, while here he says he saw her go off home.

Phool Mahomed No. 16, a resident of Bholta came with Birmomoi and witnessed the execution of the deed, at the foujdary he deposed that she came in a *palkee* to prisoner No. 4's house and left again in a *palkee* in the afternoon to go to Jytool, here he says she was on foot, and that he does not know where she went after the deeds were signed.

Malee No. 17 is a servant of prisoner No. 4's and has no house of his own, after execution of the deeds which he witnessed, Birmomoi went away accompanied by Ain Mahomed witness No. 12, and the Bholta ryots, thus directly contradicting their evidence.

Sobandee witness No. 18, lives in Satrooka, five *coss* from Bograh, of which village prisoner No. 4 is farmer, whose servant called him.

Of these seven witnesses to the deed only one the writer, witness No. 12, can sign his name, he is a ryot of one of the prisoners who was present at the alleged execution of the deed, and who asserts its validity. Witnesses Nos. 13 and 18 are ryots of a farm belonging to prisoner No. 4, situated ten miles from the place where the deed was executed, and who without any connection with Birmomoi or her estate were, they say, especially summoned to witness her parting with her property. Witness No. 14 is a ryot of another farm of prisoner No. 4, he happened to visit the thannah on business and to walk in to prisoner No. 4's in time to see the deeds prepared and exchanged. Witness No. 17 is a servant of the prisoner No. 4, and has no other home than his master's. Witnesses Nos. 15 and 16 are the only two who have any connection with Birmomoi, they live in Bholta, a portion of which prisoner No. 4 holds in farm.

Such evidence not only does not support the defence, but is almost enough of itself to condemn the prisoner. He in his answer and in several petitions presented by him, attempted to show gross contradictions or inconsistencies in the evidence against him, but his assertions were either untrue or the inconsistency was explained or trifling, or arose from an evident error, as when one Udoy Chaund, a witness before the sudder ameen, deposes first that Birmomoi was at Raikali till the 18th Bysakh and afterwards that she heard from Ramgovind of the forgery on the 12th and started for Bograh next day. He also pleads that Act XXX. of 1841, is not applicable to his case for the *patta* being written on a stamp paper of insufficient value, as declared by the sudder ameen, cannot be considered a document within the meaning of that Act, &c. &c. He alleges that the case was got up out of spite by Kishtonath Buksee, but could give no probable ground for the charge.

I considered that the evidence for the prosecution fully estab-

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lished the fact that the *patta* was prepared at Maltinugur (Bograh) and Birmomoi's signature attached to it, while she was eighteen miles distant. The case was brought forward, a fortnight after the date of the *patta*, many of the witnesses were examined then and most of them again afterwards in the sudder ameen's and the joint-magistrate's courts, and their various depositions, though taken at great length, and with much unnecessary matter introduced, agree in all essential points with their statements on the trial. The evidence for the defence is by no means so consistent, some of the discrepancies I have mentioned and besides the fact of all the witnesses to the *patta* being ryots or servants, or otherwise under the influence of the prisoners, and with the exception of two utterly unconnected with Birmomoi, would render it almost impossible to credit their evidence however consistent. The law officer convicted the prisoner on the 2nd charge, on full legal proof, and I concurred and passed the sentence mentioned.

Sentence passed by the lower court.—Imprisonment with labor without irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present Messrs. H. T. Raikes and J. H. Patton.) We find that Birmomoi appeared in person and denied the signature affixed to the deed, and proved to the satisfaction of the sessions judge that she was at the distance of nine *coss* from Bograh, at the time the deed is said to have been executed. The evidence of the *vakeels*, employed by the prisoner and his wife in the civil suit, satisfactorily proves that the deed in question was handed to them by the prisoner, for the purpose of being filed in the court of the sudder ameen. We agree with the judge that the witnesses cited by the prisoner, though deposing in his favor, are not calculated to remove suspicion from him. They are ryots and dependents of his own, are likely to have given evidence on his behalf without scruple, and we think the judge is justified in placing no reliance on their statements. The probabilities of the case are strongly in favor of the judgment recorded, and seeing no reason to interfere with the conviction, we reject the appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq., *Officiating Judge*

RAMMONEY BURNICK AND GOVERNMENT

versus

JUGGERNAUTH BURNICK (No. 1,) RAMDOSS (No. 2,) KASHEENAUTH BURNICK (No. 3, APPELLANT,) RAMJOY DOSS BHOOYEAH (No. 4, APPELLANT,) AND RAMJOY DOSS (No. 5.)

Tipperah.

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Case of KASHEENATH BURNICK and RAMJOY DOSS BHOOYEAH, APPELLANTS, and others.

Conviction and sentence passed by the sessions judge in a case of culpable homicide upheld in appeal.

CRIME CHARGED.—Nos. 1 to 4, wilful murder of prosecutor's brother, Ramkonnye Burnick; No. 5, accessaryship after the fact to the above murder.

CRIME ESTABLISHED.—Nos. 1 to 4, culpable homicide of Ramkonnye Burnick, brother of the prosecutor; No. 5 being accessary after the fact to the above homicide.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—The prosecutor in this case lives in the village of Sonahpore, in thannah Ameergong. On the night of the 28th of Assaur, 1261, B. S., he was informed by his brother, the deceased Ramkonnye, that he was about to go on some business to the house of Phezooram Dhoobee, one of his neighbours. The next morning, when he rose, he missed his brother from his usual place, but supposed that he had gone, as he had said he would, to the Dhoobee's house. The prosecutor then himself went to a *haut* at some distance. He did not return home until the Thursday ensuing, when he was much alarmed by hearing from his sister, Chunder Kullah, that no news had been heard of their brother since he had left home last.

His inquiries about his brother proving fruitless, he informed the village chowkeedar of the matter, and went with him to the Ameergong thannah, where he stated his suspicion that his brother had been made away with by the first four prisoners, who, he well knew, were bitter enemies of his brother.

The parties were thereon arrested, when prisoners, Juggernauth, No. 1, and Ramdoss, No. 2, confessed that they had beaten and kicked the deceased, and that he had died under their hands from the ill-treatment he had received.

As their confessions involved the 5th prisoner, Ramjoy Doss, as an accessary after the fact, he also was arrested, and acknowledged his having been aware of the deed, and having afterwards

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assisted the other four prisoners to conceal the body. The information supplied by him ultimately led to the discovery of the body, which was found lying under a tree in a spot near the house of a man named Rampersaud living in mouzah Kalessur. The finding of the body not taking place until twelve days after the man's death, little more than a skeleton remained. The deceased was a man in the prime of life, about twenty-seven or twenty-eight years, and was in perfect health at the time of his disappearance.

Before the magistrate, prisoners, Juggernauth No. 1, Ramdoss No. 2, and Ramjoy Doss No. 5, repeated their confessions.

At the sessions all the prisoners pleaded *not guilty.*

The evidence of four persons, who were witnesses to the fact, clearly proved the main charges against the prisoners. Three women, witnesses Nos. 1 to 3, living in the same village with the prisoners, and who themselves occupied the same *baree*, depose distinctly to having witnessed the assault by the four prisoners upon the deceased, who was thrown down by them and beaten, and kicked when in that position. This occurred about midnight of the same day, on which deceased had left his house in the manner detailed above. The night was a moonlight one and they could see clearly what passed. The women screamed out on seeing what happened, when the prisoners abused and threatened them, compelling them to silence. The four prisoners then took up the body, which the eye-witnesses all state, being heavy like that of a dead person, and carried it off in an easterly direction towards the hills. These witnesses state further that Gooroodoss Doss, witness No. 4, the brother of the prisoner, Ramdoss (No. 2,) came up to where the prisoners were standing, after the assault and spoke to the prisoners. This man was ultimately directed by the joint-magistrate to be retained as a witness, as his evidence was most necessary for the elucidation of the case. In his evidence he states, that he had seen the prisoners in consultation together, and had heard from his brother, prisoner Ramdoss No. 2, that they had been consulting about their design to kill the deceased. The woman Somittra, cousin of the above witness, and who lives in the same house with him and prisoner, Ramdoss Doss (No. 2,) states in her evidence, that on the day in question she saw the prisoner, Juggernauth, take Ramdoss Doss, prisoner (No. 2,) aside, and speak to him in private, as if in consultation. Labonee Doss, another witness (No. 22,) residing in mouzah Kalessur, states that he found a body lying in the paddy-field belonging to him, and that he and his neighbours, Ramgopaul and Rampersaud (witnesses Nos. 21 and 22,) recognized it as being the body of Ramkonnye, whom they had known previously. Afraid of being drawn into some trouble from the body being found near their dwellings, they aided Labonee Doss, (witness No. 20,) to re-

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move the body from where it was found by them, to the spot where it was afterwards, on their information, found by the police. The spot where the body was found by these witnesses, (being that where it was first thrown by the prisoners) was about two *coss* from the house of the deceased, and the place where it subsequently was discovered, on the information, by the police, was about half a mile further off.

That there had been enmity for some time past between the first four prisoners and the deceased is clearly proved by the evidence of several witnesses. The prisoner Ramjoy Doss (No. 4,) had an illicit connexion with the sister of the deceased, who had had a quarrel with him on that account, and had beaten him. The deceased had also quarrelled and fought with Kasheenauth, (prisoner No. 3,) with whom he had a disagreement about his not affording proper support to his (deceased's) niece the woman, Jyekallee, who was married to Kasheenauth's brother, Ooma Kanth, then absent at Akyab. It further appears that the deceased had an intrigue with the woman, Kazee, the wife of a man named Ramdoss Potdar. This woman had afterwards for her lover, the prisoner Juggernauth, so *that* person also nourished ill-will towards him. The fourth prisoner, Ramjoy Doss Bhooyeah, had carried on an intrigue with the deceased's sister, Chunder Kullah, and there was ill-will between them on that account.

A neighbour of the prisoners, named Komul Doss, produced a *tauveez* or armlet given to him by the prisoner Ramdoss Doss, two or three days before the arrival of the darogah to investigate the case. He had been requested by the prisoner to keep it for him. The *tauveez* was recognized and sworn to by two witnesses, as well as by the prosecutor, as being the property of the deceased, Ramkonnye.

The confessions of the prisoners, Juggernauth Burnick (No. 1,) Ramdoss Doss (No. 2,) and Kasheenauth Burnick, (No. 3,) are attested by the witnesses, in whose presence they were taken in the mofussil and before the magistrate.

Of the manner in which the deceased met his death, there can exist no doubt whatever. The confession of three of the prisoners, as well as the positive and direct evidence of eye-witnesses sufficiently attest the fact; but nothing elicited in the case can sustain a charge of wilful murder against the prisoners. Some weight may be attached to the circumstance of the consultation of the prisoners beforehand, as showing malice aforethought, and, as stated by one witness, Gooroodass Doss (No. 4,) a deliberate design to put him to death, but this man's evidence goes no further than that he had *heard* from his brother Ramdoss Doss, (prisoner No. 2,) that the other prisoners had designed to kill the deceased and had wished him to join them. This even, if admitted to be true, would not affect the other

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prisoners, being only the allegation at second hand of one of them. The confessing prisoners, Juggernath Burnick, (No. 1,) and Ramdoss Doss, (No. 2,) make no mention of their having entertained any further designs against the deceased than to give him a beating; and this assertion is supported by the facts; for had the prisoners really cherished the intention of putting him to death, they would have used very different means to effect their purpose than what their own avowal and the evidence of the eye-witnesses show that they actually employed. No weapons of any kind were used, which would certainly not have been the case had they designed to murder the man, and all the evidence tends to show that they intended to effect nothing more than what some of themselves allege, viz., to inflict a beating upon a man towards whom they bore a grudge and jealousy. In this, as in many other similar cases, the result went further than what was ever designed or contemplated by the actors.

In concurrence with the *futwa* of the law officer, who held that the act of the prisoners amounted to culpable homicide, I sentenced Juggernauth Burnick (No. 1,) Ramdoss Doss (No. 2,) Kasheenath Burnick, (No. 3,) and Ramjoy Doss Bhooyea (No. 4,) as principals to five years' imprisonment with labor in irons, and Ramjoy Doss, (prisoner No. 5,) as an accessary after the fact, to three years' imprisonment, and to pay a fine of 30 Rs., otherwise to labor until the expiry of the term of his sentence, or until payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Although the prisoners have denied throughout any participation in the homicide, the prisoner, Kasheenauth, admitted in the foujdary that he heard the commotion which took place in Ramdoss' house on the night in question, and also heard of deceased having been beaten to death. The direct evidence of the eye-witnesses, however, implicates both the prisoners as actually assisting the others in the assault, and confirmatory proof of the truth of their statements is so far afforded by the repeated confessions of the other prisoners, that we must regard them as sufficient to establish the guilt of these prisoners, who, we observe, could get no witnesses to support their defence before the sessions. We reject this appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges*.

RAMZAN ALEE AND GOVERNMENT
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Hazareebagh.

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The prisoner was not sentenced capitally, with reference to reasons recorded by the lower court.

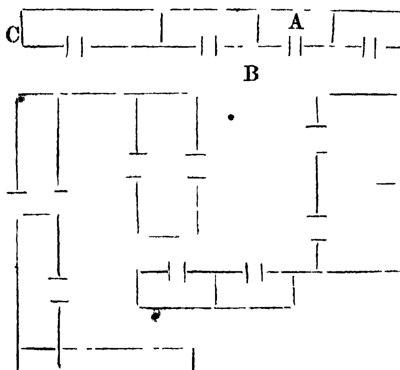
CRIME CHARGED.—Wilful murder of Diam Alee Kullah by striking him with a spear.

Committing Officer.—Mr. R. Thompson, junior assistant of Koordah sub-division.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 9th September, 1854.

Remarks by the deputy commissioner.—The prosecutor states that his father, the deceased, Diam Alee, had gone in the daytime to the house of one Jeetun Dosadh, and was there wounded by the prisoner; prosecutor was called to see his father after the event, and found him within the enclosure of Jeetun's house. He died on the second day afterwards. Prosecutor has no further personal knowledge of the facts.

Before the police officer, the deceased made a statement to the effect, hearing a noise at Jeetun's house, he went there and was, without any provocation given, wounded by the prisoner, Hurnam Dosadh, with a spear.



The marginal plan will aid the comprehension of this rather obscure case. A is an apartment occupied by three females of Jeetun's family, B is the spot where the murder occurred, and C about the place where the witnesses depose to having seen the fact. In the original plan, the police officer has noted that the prisoner came out of the house A and wounded deceased, but of this circumstance, no other trace appears.

The prisoner pleads *not guilty*. No. 1, witness Jeetun Dosadh, states that he had left his spear in the enclosure of his house, and had gone to make his report at the police station, and was

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returning homewards, when he heard Diam Alee within the enclosure of witness's house, calling for aid, and saying that Hurnam Dosadh had wounded him with a spear. Witness and three others ran into the enclosure and seized the prisoner, and witness drew the spear out of the deceased. Information was immediately given to the police officer, witness saw the wound inflicted, he was about ten paces distant outside his own door on the north side. Witness did not ask deceased why the prisoner had wounded him, prisoner said it was his fate, none else were in the house, three women had gone out to gather wood. The prisoner had put up at witness's house the night before the fact.

Three other witnesses depose as follows: Supkoo saw the wound inflicted, he was then ten paces distant, Koiwa did not see the fact, but saw the prisoner with the spear in his hand, and took him into custody, Sookun did not see the fact but heard the deceased cry out, that the prisoner had wounded him. Did not hear any previous disturbance, prisoner had hold of the spear when taken up. The women were all absent.

No. 2, Supkoo,
" 3, Koiwa,
" 4, Sookun.

These witnesses also prove the confession of the prisoner before the police officer. This is to the effect that the deceased had spoken abusively to him, and he therefore gave him one thrust of a spear. Prisoner had put up at Jeetun's house on the previous afternoon. The prisoner in his defence states that his confession was extorted by the darogah, who put him to torture by burning his hands with a torch, prisoner heard some women say that a seller of liquor had died of cholera, prisoner never so much as saw Diam Alee.

For the defence.

No. 10, Gokool,
" 11, Koonj Sahoo,
" 13, Dewan.

These witnesses speak to the previous good character of the prisoner.

The jury,* whose names are entered below, find the prisoner *not guilty*. They doubt the testimony of the witnesses to the fact, because the situation was not readily visible from the outside.

I differ from this verdict. I find no reason to doubt that the witnesses did really apprehend the prisoner, under circumstances that assured them of his having committed the act. And this is borne out by the confession of the prisoner, which he admits having made. The cause of the murder does not appear. There is evidently a high probability that something occurred that has not transpired. However, had there been any thing that would tend to excuse the prisoner, it is reasonable to suppose that he

* Lalla Gujraj Singh, mooktear.
Ukhory Jujoru Lal, mooktear.

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would himself have declared it. The explanation in his confession is, that he was provoked by abusive language. But abusive language is far too common among these people to excite ungovernable rage, it is the daily, hourly habit of their lives. There is no shadow of justification made out for the prisoner's act.

These ignorant races are cruel—not so much from malice, as from want of reflection. If provoked, they use the weapon nearest at hand without the least forethought of its effect. They yield to a revengeful impulse, and kill where they mean only to punish.

In the present case, though there be no justification, there is on the other hand no proof that the act was premeditated, and in such circumstances, I conceive that capital punishment may and ought to be remitted. I find the prisoner guilty of wilful murder, and recommend that he be sentenced to imprisonment for life with hard labor in irons and in transportation.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner confessed in the mofussil that he speared the deceased because he abused him. In the foujdary court and before the sessions he pleaded *not guilty*. Two witnesses have throughout sworn to seeing the prisoner inflict the wound, of which the deceased died; two others do not adhere to this story of seeing him in the act, though they depose they accompanied the other two to the spot, where the deceased was found wounded, on hearing him cry out that the prisoner had wounded him. The deceased, shortly before his death, swore that the prisoner was his assailant; with reference to the observations of the deputy commissioner, we think that the ends of justice will be satisfied with passing sentence upon the prisoner of imprisonment for life in transportation, as proposed by the lower court.

PRESENT:

Hazareebagh. SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

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Case of KOLEHA.

BURJOO AND GOVERNMENT

versus

KOLEHA.

The prisoner was sentenced to death for committing a treacherous murder.

CRIME CHARGED.—Wilful murder of Bechoo, father of the prosecutor.

Committing Officer.—Captain W. H. Oakes, principal assistant, Governor-General's agent, Lohardugga division.

Tried before Major J. Hannyngton, deputy commissioner, Chota Nagpore, on the 25th September, 1854.

1851. November 11. Case of KOLEHA.

Remarks by the deputy commissioner.—The prosecutor states that his father, the deceased, Bechoo, had for two years past rented a field from the prisoner, Koleha, and had this year paid the rent in advance. Prosecutor and deceased were tilling the field, which the prisoner wished to prevent, and after some words, the deceased proposed that they should have the dispute settled at the police station. They had set out for that purpose, when suddenly the prisoner cut down the deceased with an axe. Prosecutor was close by, but did not see the blow struck, heard it, and saw the prisoner running away with the axe in his hand. There had been a dispute about the field at seed-time, and the prisoner had oversown the tenant's crop.

The prisoner pleads *not guilty*. No. 1, witness, Doorjun, states that one Friday in the latter half of Assar, he and prosecutor and the deceased were tilling a field in Rokedega, when the prisoner came and forbade them. They said to him, The field is yours; but we have paid the rent and why should we not till it? They then offered to refer the disputes to the police station, and prisoner proposed that they should go to one Abhai Singh. Accordingly witness and Burjoo and Bechoo and Koleha, these four, set out together. They had proceeded about the distance of two gun-shots from the field, when the prisoner cut down Bechoo with an axe, and having done so, went into the jungle. Witness saw the blow inflicted, he was then about fifteen paces distant. Witness immediately went to give information to the police, Bundhoo and Chytoo were tilling their fields near to the scene of the murder. Prisoner is the steward of Rokedega village.

These witnesses* state that they saw the prisoner cut down the deceased with an axe. They were not near enough to hear the words that passed.

* No. 2, Bundhoo.
,, 3, Chytoo.
,, 4, Juttoo.

The deceased died immediately.

The apprehension† of the prisoner and the record of the inquest are‡ proved by the witnesses, named in the margin.

† No. 5, Dhodhur.
,, 6, Teerbhoobun Singh.
‡ ,, 7, Bundhoo.
,, 8, Rengta.
,, 9, Bootea.

The confession of the prisoner before the police officers is proved by the witnesses named in the margin.§ This confession is to the effect, that prisoner was tilling his own field, when the deceased interfered, and prisoner therefore killed him.

§ No. 10, Munnaram.
,, 11, Needhee.

The prisoner in his defence says that the deceased was killed by one Bohorun, an armed servant of Abhai Singh's. This is known to the witnesses, Borra and Beerbul. The axe now in court belongs to Bohorun.

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For the defence.

* No. 12, Beerbul.
" 13, Bor[illegible]

The witnesses* profess their ignorance of any matter of defence.

The jury, whose names† are entered below, find the prisoner guilty as charged.

In this verdict, I concur. There is no proof of premeditation; but the prisoner came armed to the field, and his act was unprovoked and treacherous. I see no reason to doubt that the deceased had paid his rent in advance and had the right of occupancy in the field. There was no forcible opposition by the deceased, but a fair offer of referring the dispute to arbitration. This offer was apparently accepted by the prisoner, and while on the way, he cut down the deceased. Under these circumstances, it becomes my duty to recommend that a capital sentence be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner confessed in the mofussil. The eye-witnesses have throughout sworn to seeing him commit the act. In his defence before the magistrate he pleaded *not guilty*, and at the sessions accused one Bohorun of the murder. The prisoner with the deceased and others had consented to lay the case before the police, and *en route* after they had proceeded a short distance, the prisoner cut down the deceased and killed him on the spot. In concurrence with the deputy commissioner, we convict the prisoner and sentence him to death.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

CHUNDA (No. 4,) JEEBOO (No. 5,) AND CHUMRA (No. 6.)

Hazareebagh. 1854. November 11. Case of CHUNDA and others.

Two of the prisoners were acquitted of perjury, as

CRIME CHARGED.—Prisoner No. 4, perjury in having on the 3rd August, 1854 deposed under a solemn declaration, taken instead of an oath, before the principal assistant Governor-General's Agent, Lohardugga division, that the defendant Chumra, alias Sookhul, was not his son, such deposition being false and

† Lalla Gujraj Singh, mooktear.
Ukhori Jujoru Lal, mooktear.

having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 5, perjury in having on the 3rd August, 1854, deposed under a solemn declaration, taken instead of an oath, before the principal assistant Governor-General's Agent, Lohardugga division, that there is no relationship between him and Chumra, alias Sookhul, defendant, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 6. perjury, in having on the 5th August, 1854, deposed under a solemn declaration, taken instead of an oath, before the principal assistant Governor-General's agent, Lohardugga division, that Jeeboo was not his brother, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

they should not have been made witnesses in the particular case.

The third was acquitted, as his commitment arose out of that of the preceding prisoners.

Committing Officer.—Captain W. H. Oakes, principal assistant Governor-General's Agent, Lohardugga division.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 20th October, 1854.

Remarks by the deputy commissioner.—It appears that on the 1st August last, Musst. Sukwaro and Kam Mura, brought a suit under Act IV. of 1840, against Sookul, Chunda, Jeeboo, Sookhram, Ayta and Chamoo.

On the same day, the prisoner, Chumra (No. 6,) who was present when the petition was read, made verbal answer, which was recorded to the effect that the land claimed belonged to him, that he had heretofore dispute with the plaintiffs, and that his real name is Chumra, though plaintiff has called him Sookul. His father's name was Gingna. Among others, he named as his *witnesses* Chunda and Jeeboo, who, as above shown, had been made *defendants* in the suit.

The principal assistant, without advertence to the circumstance of their being defendants, took the depositions of Chunda and Jeeboo, who being questioned as to whether they were relatives of the defendant, Chumra, swore positively that they were not. But it was shown that Chunda is the father, and Jeeboo, the full brother of Chumra, who is also and more commonly known by the name of Sookul. Therefore Chunda and Jeeboo were severally committed for trial on a charge of perjury.

In preparing the record of Jeeboo's commitment, the principal assistant summoned Chumra *alias* Sookul, as a witness for the prosecution. Chumra *alias* Sookul then swore that Jeeboo is not his brother. But it was proved in evidence that the deponent and Jeeboo are full brothers, Chumra *alias* Sookul was therefore committed for trial on a charge of perjury.

Before the sessions court, it was clearly proved that the prisoner, Chunda, is the father of Chumra *alias* Sookul, and of Jeeboo, and that Jeeboo and the said Chumra *alias* Sookul are full brothers.

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The prisoners were therefore in concurrence with the verdict of a jury convicted of perjury, and were sentenced to imprisonment for three years' with labor without irons.

I am of opinion that this sentence might, with advantage, be mitigated. Not that the perjury should be in any sense excusable, but because it was not, as I think, necessary to place the parties in the position to commit this offence. That Sookul, Chunda and Jeeboo had one interest was apparent on the face of the plaintiff's petition, and for this reason, they should not have been made witnesses at all, unless it were shown that the plaintiff by making them defendants was endeavouring unreasonably to exclude their evidence, which was not shown or suggested to be the case. And under the circumstances of the defendant, Chumra *alias* Sookul, having in his answer called himself the son of Gingna, and having repudiated the ascribed name of Sookul, and of Chunda and Jeeboo having sworn, they were not his relatives, it was not, in my view, a sound discretion to make him a witness against Jeeboo. The witness was driven to the dilemma of having to declare his answer false or of perjuring himself.

But further it was shown by copies of proceedings produced by the prisoner, Chumra, that Kani, one of the plaintiffs in the suit, under Act IV. of 1840, had charged Chumra with witchcraft, and had therefore been sentenced by the principal assistant, on the 18th March last, to imprisonment for fifteen days with fine in lieu of labor, and that on the 19th April following, on the complaint of *Chumra*, the said Kani and others were bound over to keep the peace towards him. In the former of these cases, it was alleged by the defendant that Chumra had *fraudulently changed his name*, but the principal assistant then declined to entertain that charge.

That the perjury charged has been committed by the prisoners, I have not any doubt. But there was no necessity for putting them to the commission of it. What strength could they have against such a trial. It is on this ground that I recommend the reduction of the sentences to the term of one year with labor.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The Court concur in the observation made by the deputy commissioner in paragraph eleven of his letter. There was not only no necessity, but it was altogether improper to make Chunda and Jeeboo, Nos. 4 and 5, witnesses against Chumra *alias* Sookul, for they were co-defendants with him in the plaint brought by Musst. Sukwaro. The interests of Chumra, Chunda and Jeeboo were identical, all having been charged with assault and carrying off the plaintiff's cattle and plough. We therefore acquit the prisoners, Chunda and Jeeboo, and direct their release.

These prisoners having been released, as they ought not to have been committed as shewn above, the conviction of the prisoner, Chumra, No. 6, must be quashed and he must be released.

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Case of CHUNDA and others.

PRESENT :

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND BAGOO JOWARDAR

versus

KALOO HAJAM (No. 5,) JOOMUN KHAN (No. 6,) PITUMBER BHOOMICK (No. 7,) KEFATOOLLAH SHEIKH (No. 8,) GORACHAND CHUNG (No. 9,) MEHEROOLLAH SHEIKH (No. 10,) KHOODEERAM CHUNG (No. 11,) SHOBHARAM MUNDUL (No. 12,) AND HURREE MOHUN SIRCAR (No 13.)

Rajshahye

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Case of KALOO HAJAM & others.

The acquittal of the accused on an insufficient indictment of culpable homicide was held to be no bar to their recommitment on a charge of murder.

CRIME CHARGED.—1st charge, Nos. 5 to 12, 1st count, wilful murder of Sadoollah Jowardar; 2nd count, being accessaries to the abovementioned murder. No. 13 being an accessary to the abovementioned murder; 2nd charge, Nos. 5 to 12, 1st count, riot attended with the wilful murder of Sadoollah Jowardar; 2nd count, being accessaries to the abovementioned riot, attended with wilful murder. No. 13 being an accessary to the abovementioned riot attended with wilful murder.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th July, 1854.

Remarks by the sessions judge.—As I consider the charge of murder brought home to the prisoner No. 5, and the other seven were present aiding and abetting, the reference is unavoidable.

The prisoners were first arraigned on a charge of riot attended with culpable homicide, and after the evidence of the prosecution had been taken, the law officer *of his own accord* interposed and gave it as his opinion, that the offence amounted to murder, and not culpable homicide. He was therefore called on at once to give his *futwa* as to the offence, and declaring it to be *kutl-ool-umud* or wilful murder, the prisoners were under the *futwa* acquitted by this court, but re-committed by the joint-magistrate on the charges exhibited in the calendar.

The circumstances were briefly as follows.

No. 10 held a *jote* in the zemindary of Ramruttun Roy (whose ryots and dependants all the parties are) and for reasons not apparent, allowed the *jote* to lay fallow. The deceased on

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this applied to the Roy's naib to be permitted to cultivate the *jote*, he paying the rent, which was granted, and he sowed the land with *rai* or mustard. The crop sprung up had been cut, and was brought to the threshing floor (called in this part of Bengal a *kolah*) and had been partly threshed out when No. 10 complained to the *naib* setting forth his right to the crop as the owner of the *jote*. The naib decided that he was entitled to half the produce, and the deceased, as he had sown and raised the crop, to the other half. Both however were dissatisfied with this decision; No. 10 claiming the whole, except what quantity had been used for seed, and from which the crop had sprung. The naib, however, either would not interfere further in the matter or held his demand exorbitant. Not being able to gain his end, No. 10 then went to No. 7, the *gomashta* of No. 13, (and who again was a *sussawul* of Ramruttun's) and from him obtained the assistance of some *latteals*, or *sirdars*, to compel the deceased to give up the mustard raised on his *jote*.

They (the *sirdars*) with No. 7, then proceeded to the *kolah* and there found the deceased, with some of his relatives, engaged putting the mustard seed into sacks before it was removed. An altercation immediately ensued, No. 10, backed by the sirdars, and No. 7, the *gomashta*, telling the deceased it was no use his resisting. A sack was laid hold of, but taken away from the person who seized it by the deceased. No. 11 then came forward to take another sack, the deceased tried to prevent him, and, while scuffling for it with Nos. 6 and 11, No. 10 laid hold of the deceased's hand, No. 5, who was armed with a *bela* or javelin, then advanced, and thrust the *bela* into the deceased's right breast, who, reeling from the wound, fell down on the ground some *cottahs* from the threshing floor, blood pouring out of the wound. The sirdars then went off, but No. 6 was apprehended with a *bela* in his hand a short distance off. No. 10 remained at the threshing floor.

The above is the substance of the evidence, in the aggregate, of the witnesses numbered 1 to 9. Witness No. 10, who is a relative of the deceased, I strongly suspect deposed only to what he heard, not what he saw, as his statement varies so much from the others.

From the evidence relied on, it is evident the deceased was struggling with two others, and in their hands, and therefore quite helpless, and could neither defend himself, nor avoid the blow aimed at his breast by No. 5; and who again inflicted the wound without his assistance being called for either by Nos. 6 or 10.

This wound, and the only one, according to Mr. Ellis the sub-assistant surgeon, who held a *post mortem* examination, was the cause of his death. It had penetrated to the heart, and it is extraordinary that the deceased survived so long after it, calcu-

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lating the time of the wound being given, to that of his death, nearly forty-eight hours elapsed, the latter event occurring when he was being brought on a litter to the station of Pubna for medical advice.

He had been previously examined by the mohurrir of Coxsa thannah, and who I examined on this point, but the result was very unsatisfactory. He deposed that the solemn affirmation (instead of an oath) had been repeated by the deceased, before he gave his evidence; but it will be seen that this fact was noted, or inserted after, at the top of the deposition and not in the deposition itself, and again the addition was made by direction of the darogah, to whom it (the deposition) was shewn.

I had first anticipated that it could be used as a dying declaration, but it refers to the value of the crop, and matters which never could have entered into the head of a dying man, unless questions were put to elicit the information recorded.

However, as the deposition has been attested, and was taken down before the deceased was removed from his house, I have filed it on the proceedings of this court, as corroborative of the evidence given *vivâ voce* by the witnesses examined, the three first being named in it. The stupidity or ignorance of the mohurrir who took down the deposition, has in a measure destroyed its value as collateral evidence; and to show how very ignorant he was of his duty, one witness (No. 11) stated he wanted to probe the wound, and was only prevented doing so by the deceased declaring, if he did it, he would kill him at once.

In addition to what has been stated above, the evidence of the first nine witnesses in the calendar establishes the following facts, or overt acts against the prisoners.

First, that No. 7 was the person who brought the *sirdars* and *latteeals*, who wished to take, and did take some of the mustard by force from the *kolah*. Some of the witnesses say he called out "the plunder is yours, and Hurree Mohun will be answerable for any one killed or wounded."

If he really used any such expression, it would make him an instigator, but setting it aside altogether or *whatever* he may have said, there can be no doubt he was, by his presence, encouraging the rest to seize the mustard seed in the sacks, and that Nos. 5, 6 and 8 accompanied him for this purpose, the last however did not take any active part in the outrage. Nos. 9, 11 and 12 lived in a village close by, and joined No. 7 and the *sirdars* at the *kolah*. Nos. 11 and 12 laid hold of a sack each of the mustard, and when the deceased received his mortal wound, he was attempting to rescue the sack taken by No. 11, a sack of mustard was also seen in his house *after*. This is deposed to by his own witnesses; No. 9, did not take any very active part in the business.

There are some confessions in the mofussil and foujdary by

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Nos. 5, 6 and 7, which have been attested; but as implicating the prisoners in the murder they are of little value. All they prove is, that the three prisoners were at the spot (or thereabouts) when the deceased received his mortal wound.

This wound, as already stated, was with a spear called a *bela*, and as one was found in the hands of No. 6, I may describe the instrument. It is a long thin *bamboo* with an iron blade, pointed, and 11½ inches in length, and very like a Nubian spear or javelin. The one in court was shown to the sub-assistant surgeon, who deposed the wound *might* have been inflicted with such a weapon, and that it was a dangerous one there can be no doubt. There was no written inquest, or *sooruthal lash* drawn up after the deceased died, hence its absence from the record.

Defence of the prisoners.—All employed mooktears to defend them, and who were also Ramrutton's mooktears.

They all gave in written defences or petitions; No. 5, in his, refers to discrepancies in the evidence of the eye-witnesses, particularly as to the party with whom deceased was struggling, and the place where he was wounded. He also asserts that the blood seen on the ground was *his*, and not *deceased's*, and pointed out a wound on his own arm, regarding which a report had been made by the darogah of Fukkerabad in the sub-division of Magoorah.

It was the finding this wound on him which led to the prisoner's arrest, I examined it after the trial. It was on the fleshy part of the right arm, and inflicted, the prisoner said, by a *surkee*. that pierced through and left another wound on the inner side of the arm. The prisoner stated he was holding up his arm to defend himself, when he got the wound. But this could never have been the case as the inner wound was higher up than the one outside or towards the shoulder. I strongly suspect that if not self-inflicted, they were punctured by some one to cause a diversion in the prisoner's favor. Four witnesses deposed to seeing the wounds, and which the prisoner admitted he had received in a dispute relating to some *rai* or mustard seed.

No. 6 in his petition affirms that he was passing along when Arman Jowardar wounded Kaloo (No. 5,) and plundered Hurree Mohun's mustard. The opposite party, being apprehensive that he would give evidence, seized and brought him before the mohurrir, when he was told that if he confessed he would be made a witness, and being helpless he did so.

The prisoner examined seven witnesses, three of whom deposed that he was seized and beat, to *make him a witness.*

No. 7 pleaded an *alibi* and examined five witnesses in support, but the *alibi* broke down; only one could speak to the date, and two others heard the date from the prisoner himself. None of these witnesses were inhabitants of Chooneeparrah, or Noparrah, which adjoins.

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No. 8 pleaded he was in the house of a person ten *russees* from the spot, or scene of the outrage, but his witnesses knew nothing of the matter.

Nos. 9, 11 and 12 gave in a joint petition, the first and last pleading they were at home, and No. 11 that he was in the house of a neighbour. They live, as already stated, close to the spot. Their witnesses did not support their statement, and two of them deposed No. 11 had a sack of mustard seed, which he tendered in payment of a debt.

No. 10 examined seven witnesses. Three said he was at the *kolah;* and four that he was at Chunder Chung's house when the dispute occurred. Two of the latter were peadahs of Ramrutton's.

No. 13 set up an *alibi*, and it was fully proved by his witnesses, including a police jemadar, that he was with the latter, when investigating into another case, in the sub-division of Magoorah, under the joint-magistrate stationed there on the day of the outrage being perpetrated.

At the conclusion of the trial, on the usual question being put to the law officer, if wilful murder was proved against any of the prisoners, he replied he could not answer without going through the foujdary proceedings. I, on this, pointed out to him the rule in Section 3, Regulation IV. of 1797, when after detaining the court for nearly a quarter of an hour, he replied according to the statement of the witnesses, wilful murder was proved against Kaloo Hajam. He was then called upon for his *futwa*, it being dusk and gave it in at 9 P. M.

In this he declares some one killed the deceased, that there was strong presumption against No. 5, but with reference to delay on the part of some of the witnesses giving evidence, and the first who complained (No. 10) not saying who wounded the deceased, *kissas* under the Mahomedan law, was barred: but No. 5 was liable to *acoobut;* and the rest as concerned (except No. 13) to *tazeer*, but that No. 7 had not given orders to kill any one, only to *loot* or plunder. No. 13 he acquitted, as his was the only defence what had been established, and none of the witnesses for the prosecution deposed to his being present, only that No. 7 was his gomashta.

It has been neither insinuated nor pleaded that the deceased was armed, or offered violence to any one, except holding No. 6 by the hair. All he did was to keep or try to save the mustard-seed, which he had raised with the sweat of his brow and his own seed; not one of the prisoners, except No. 10, lay or could have any right to the mustard grown on the land. Even No. 10 does not now urge his claim Suspecting no doubt that if he did, it would only entangle him deeper in the mesh he has made for himself.

All the parties in this case are either ryots or dependants of a

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zemindar, whose reputation is rather notorious for having in his employ turbulent characters and *latteals*, and these, headed by his *sussawul's gomashta*, mortally wounded a *ryot*, who his naib gives land to (which would otherwise lie fallow and yield no rent) and this, on the threshing floor, where the grain was being separated from the chaff, *because* he resisted the lawless individuals who wanted to deprive him of the produce of his labor.

To satisfy the justice of the case, a severe example should be made, but, adverting to the fact of the prisoners being first arraigned on a charge of *culpable homicide*, to the favorable, or lenient interpretation of the Mahomedan law, by the law-officer of the court, and who sat on the trial, but whose reasons for suspecting the truth of the statements made by the eye-witnesses I do not think conclusive, nay, am rather surprised that any evidence was obtained, after the deceased's death, I beg to recommend, that No. 5, as guilty of the murder, from his inflicting the mortal wound of which the deceased died, be sentenced to imprisonment in transportation for life; that Nos. 7 and 10, as principals in the second degree, in having brought the *latteeals* or *sirdars* to the *kolah*, when the deceased was wounded mortally, be sentenced to fourteen years' imprisonment with labor and irons, and Nos. 6, 8, 9, 11 and 12, for aiding and abetting in the murder, by their presence, be sentenced to seven years' imprisonment, also with labor and irons. No. 13, agreeably to the *futwa*, has been released, the other prisoners are in jail; and as the Court may wish to refer to the proceedings held on the first trial (No. 16 of the sessions for July) they are also herewith forwarded in original, and an extract from the statement No. 8, or my remarks in the case have been appended to the proceedings.

On perusal of the above remarks the Court.—(Present: Messrs. A. Dick and B. J. Colvin) recorded the following resolution No. 885, dated 20th September, 1854.

The Court direct that the sessions judge of Rajshahye, be called upon to explain how he came to disregard the course laid down in paragraph 3 of the Circular Order No. 70, dated the 14th November, 1851, and to acquit the prisoners of the charge of culpable homicide directing their release by warrant, because the evidence proved the crime to be murder. He will likewise explain, how he felt justified in convicting of murder, a person who had been acquitted on the very same evidence of culpable homicide.

In reply to the above resolution the following letter No. 16, dated 20th October, 1854, was submitted by the sessions judge.

I have the honor to acknowledge the receipt of the Court's resolution No. 885, under date the 20th September, in the case of Kaloo Hajam and others, calling upon me to explain "how

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I came to disregard the course laid down in paragraph 3 of the Nizamut Adawlut Circular Order No. 70, of the 14th November, 1851, in directing the release of the prisoners by warrant, because the evidence proved the crime to be murder," and likewise, "how I felt justified in convicting of murder, a person who had been acquitted on the very same evidence of culpable homicide."

In reply to the first question, I beg to state that on a reference to the paragraph of the Circular Order quoted, it does not appear, to my humble comprehension, that I acted counter to the directions it contains.

On the law officer remarking the offence was murder, and not culpable homicide, and agreeing with him, the trial was stopped, before the defence was taken, and the law officer directed to give a *futwa* as to the nature of the offence. This he did, finding it murder, and declaring the prisoners not punishable on the charge on which they were arraigned. A proceeding was then sent, with a copy of the *futwa*, to the magistrate, and also a warrant of acquittal, as that trial in fact was concluded, and without an order for their release, the prisoners could not be arraigned on another charge.

The Court's circular of the 14th November, 1851, is silent on the subject of a warrant, but as in every trial held at the sessions and disposed of without reference, the prisoner is sentenced by a warrant, either to punishment or acquittal, there was nothing irregular in issuing the warrant of acquittal in my humble opinion. And I believe the Court have laid down, that "under *all circumstances* a sentence of conviction or acquittal must be passed upon every person committed for trial." Nizamut Reports volume V. pages 145 and 173, Beaufort's Digest, page 130.

With regard to the second query put by the Court, "how I felt justified in convicting of murder, a person who had been acquitted on the very same evidence of culpable homicide," I beg to observe, and the Court will perceive, that the *futwa* in the first trial acquitted no one, either of murder or culpable homicide. It merely found the offence, murder, and declared that, under the commitment, the prisoners could not be convicted of that offence, or of being accessary thereto. I concurred and directed their release by the issue of warrant of acquittal, in the usual form of such warrants.

The prisoners did not plead *autrefois acquit*. They were not acquitted after being put on their defence in the other trial, and, in fact, except that the warrant was (as I have just stated) one of acquittal in the usual form, they could neither urge nor plead it in their defence I therefore proceeded with the trial, and the *futwa* convicting 8 of the prisoners, I recommended a sentence should be passed on them, their conviction, as well as the sentence to be passed, resting with the Superior Court.

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I have not received back the proceedings on the trial, only the enclosed extract, appended to the proceedings in the first trial; and the calendars (English and Bengallee) which were enclosed in the envelope containing the Court's resolution. These I beg again to return.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) With reference to the explanation of the sessions judge, the Court remark that Circular Order No. 70, dated 14th November, 1851, prescribes that on alteration of a charge being deemed necessary, the proceedings in the trial shall at once be stopped, and the case remanded to the magistrate with the necessary directions for a fresh commitment. It is silent altogether as to passing any orders regarding the accused, nor is the precedent cited by the sessions judge in point, for it refers only to a trial quite concluded.

The course followed by that officer in this case has raised considerable doubt as to the validity of the present trial, but after maturely considering the circumstances of it, the Court are of opinion that the erroneous order of acquittal and warrant of release do not prevent their proceeding with the case. The facts had not been pronounced on as regards the guilt or innocence of the prisoners; the acquittal was simply by reason of the act proved being murder, and not the minor crime of homicide charged, in reality an acquittal on insufficient indictment, so that as far as any opinion may be said to have been expressed, it was one unfavorable to the prisoners, from which they could never have supposed that their unconditional discharge was intended.

The Court, having gone through the proceedings, concur with the sessions judge in finding the prisoners guilty of the crimes laid to their charge. The collecting of the *latteeals*, the attack upon the threshing floor, the mortal wounding of the deceased, by Kaloo Hajam, and the presence of the several prisoners at the outrage, are all clearly proved. We therefore sentence them as proposed by the sessions judge. We do not deem a capital sentence in the case of Kaloo called for, as there was no premeditated determination to take life.

With reference to the acquittal by the sessions judge of Hurree Mohun Sircar, prisoner No. 13, we consider that he should have, in explanation of his acquittal, detailed more at length how he held proof of his defence *(alibi)* to be a bar to his conviction on the charge of being an accessary to the crime of riot attended with murder, which from the definition of accessaryship in Circular Order No. 8, dated 7th June, 1817, did not involve his presence on the occasion.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

NOBIN GHOSE GOWALA.

Hooghly.

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Case of NOBIN GOWALA.

The prisoner was convicted on his own confessions and the evidence for the prosecution.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunderseker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 14th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Nobin Ghose Gowala, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the indictment.

The evidence of two approvers convicts the prisoner of having been concerned in seven dacoities, and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits, and taken part in twenty-three dacoities under different leaders.

Wit. No. 1, Nimayee Nikaree,
" " 2, Madhub Dass Kyburto.

The prisoner's detailed confession before the same officer embraces thirty-nine dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court and admits his previous confessions. I convict him of the crime charged, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner has confessed both before the magistrate and sessions judge, and the records shew the commission of the dacoities enumerated by him before the latter officer. We sentence him as proposed.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND BAEEREE BAGDINEE

versus

MOHESH BAGDEE CHOWKEEDAR (No. 5,) MUDHOO BAGDEE CHOWKEEDAR (No. 6,) KASHEE BAGDEE CHOWKEEDAR (No. 7,) AND JOLODHUR BAGDEE SIRDAR (No. 8.)

Hooghly. 1854. November 16.

Case of MOHESH BAGDEE CHOWKEEDAR and others.

CRIME CHARGED.—Prisoner Nos. 5 and 6, wilful murder of Kashee chowkeedar, husband of the prosecutrix's sister; prisoners Nos. 7 and 8, privity to the above wilful murder.

CRIME ESTABLISHED.—Prisoners Nos. 5 and 6, culpable homicide and prisoners Nos. 7 and 8, privy to a culpable homicide.

Conviction upheld, but sentence passed by the session judge mitigated, under the circumstances of the case.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 9th August, 1854.

Remarks by the officiating additional sessions judge.—This homicide was the result of a drunken broil. The prisoners and the deceased had been drinking together and fell out on their way home. The cause of the quarrel does not appear, but it originated with and was confined to the prisoners, Mohesh Bagdee, No. 5, Mudhoo Bagdee, No. 6, and the deceased. The two former are stated to have struck the latter a blow each with a stick, but it is difficult to say, from the nature of the evidence and the unwillingness with which it was tendered, what really happened on the occasion, and when and where the assaultee died. His body was found on the following day on the banks of the Sursuti river, washed up by the tide, with seeming marks of violence, but the evidence on this point is not clear and no *post mortem* examination was held, owing to the advanced stage of decomposition the body had attained when forwarded to the civil surgeon for dissection. There seems to have been a day's unnecessary delay in the examination of the body, after its arrival at the sudder station, it having reached Hooghly on the night of the 19th July and the surgeon's report, describing its state, being dated the 21st idem, but the circumstance is scarcely worth notice, as from the fact of the body being immersed in water for twenty-four hours, decomposition must have ensued almost immediately. The prisoners, Kashee Bagdee, No. 7, and Jolodhur Bagdee, No. 8, were present when the assault took place and admit, both before the police and the magistrate, that they saw it perpetrated by the prisoners, Nos. 5 and 6. Indeed they give the only account of the affair, such as the removal of the body, after the beating, but implicit reliance cannot, of course, be placed on their statement

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as affecting the guilt of their co-prisoners. They were chowkeedars, however, and it was their bounden duty to report the outrage to the police without loss of time. The other prisoners were chowkeedars also (as was the deceased) and therefore doubly culpable in committing a violent breach of the peace, in a drunken and disorderly state.

Sentence passed by the lower court.—Nos. 5 and 6, to seven (7) years' imprisonment each with labor and irons, and Nos. 7 and 8, for four (4) years' each without irons and a fine of twenty-five (25) rupees within one month, or in default of payment to labor until the fine be paid, or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We think that the facts of this case are sufficiently proved against the prisoners, but there is nothing in the circumstances of it to require such a severe punishment as has been passed by the sessions judge. It was a sudden drunken brawl without any purpose of taking life; the only feature of aggravation in it is the concealment of the offence, and this by the prisoners, who are chowkeedars. We sentence prisoners Nos. 5 and 6, to three years' imprisonment and Nos. 7 and 8, to one year's imprisonment; the labor as regards all being commutable to a fine of 25 rupees each, payable in fifteen days.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ. *Judges.*

GOVERNMENT

versus

ELLAM BEARAH (No. 2.)

Jessore.

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Case of ELLAM BEARAH.

The prisoner was acquitted, it not appearing that he wilfully perjured himself.

CRIME CHARGED.—Perjury, in having, on the 6th June, 1854, corresponding with 25th Joisty, 1261, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the joint-magistrate of Magoorah, that he recognized Janbux, Omar Khan, Sonaoollah, Bucksho and Arubdi, as defendants, and in having on the 31st August, 1854, corresponding with 16th Bhadro, 1261, again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the sessions judge, that he does recognise Janbux, Arubdi, Bucksho, Sonaoollah and Jeahoollah. The sessions judge then asked the prisoner the reason that he recognised Omar Khan before the joint-magistrate of Magoorah, but he could not recognise Jeahoollah, and the reason of his recognising Jeahoollah before the sessions court, and his not being able to recognise Omar Khan: upon which the defendant said he

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recognises all, but that he identified them when they were in confusion. He was again told to point out those whom he had recognised: on which he pointed out Arshad, Janbux, Buckshoollah, Jeahoollah and Sonaoollah, and said that these are the persons whom he had recognised. The prisoner could neither point out Omar Khan, whom he recognised in the foujdary nor Arubdi, whom he has formerly recognised in the judge's court, but he now points out one Arshad, who was not recognised by him in either court, such statements are contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 14th September, 1854.

Remarks by the sessions judge.—Perjury, the crime charged is clearly proved from the evidence for the prosecution.* The statements of the prisoner are contradictory of each other on a point material to the issue of the case.

* Witness No. 1. Lalbehary Bose.
,, ,, 2. Omachurn Bose.
,, ,, 3. Chundernath Roy Moonshee.
,, ,, 4. Reazuddin Nazir.

The jury give a verdict of guilty, in which I concur.

I sentence the prisoner to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R Barlow, Bart., and Mr. B. J. Colvin). The prisoner, in his defence, alleges that he did not know the names of the persons who committed the assault. He was one of the bearers who carried the palanquin in which Mohes Chukerbutty, who is said to have been robbed, was going from Cusbah to Magoorah. The prisoner identified certain of the assailants before the magistrate; before the sessions judge he pointed out other persons. He pleads that he was confused, but he was examined in the sessions court three and half months after he had been before the magistrate; and that he was altogether previously unacquainted with the parties charged with the robbery. No case of wilful perjury is, in our opinion, made out against the prisoner. It is highly probable that what he has urged in his defence is the real state of the case.

We acquit him and he must be released.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

RUTTUN SIRDAR.

Hooghly.

1854.

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Case of RUTTUN SIRDAR.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chundersekur Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 13th October, 1854.

The prisoner confessed throughout to being guilty of the charge against him.

Remarks by the officiating additional sessions judge.—The prisoner, Ruttun Sirdar, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the charge.

The evidence of two approvers convicts the prisoner of having been concerned in seven dacoities, and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs and taken part in twenty-four dacoities under different leaders.

Nemai Nekari, witness No. 1.
Madhub Das Kibuit, witness No. 2.
Kashinath Mitree, witness No 3.
Gopalchunder Miser, witness No. 4.

The prisoner's detailed confession before the same officer embraces twenty-two dacoities, proof of the occurrence of the major part of which has been furnished by the magistrate in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or voluntariness of these confessions.

Hurishchunder Rai, witness No. 5.
Birjomohun Mitree, witness No. 6.

The prisoner repeats his plea of guilty before this court and admits his previous confessions. I convict him of the crime charged and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We find the circumstances detailed by the sessions judge to be established by the record, and the prisoner has confessed fully and voluntarily in both the magistrate's and sessions judge's courts. We sentence him as proposed.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND KOMULDAS TANTEE

versus

SOOSAREE AGOORIN (No. 1,) NUDDEARCHAND SAMUNT (No. 2,) GORACHAND SAMUNT (No. 3,) BYKUNT JUSH (No. 4,) AND DHONA AGOORIN (No. 5.)

Beerbhoom.

1854.

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Case of SOOSAREE AGOORIN and others.

One prisoner convicted of being an accomplice in murder was not sentenced capitally, the share she took in it, not being proved.

CRIME CHARGED.—1st count, theft attended with murder of Pursuno Myee Chokree daughter of Komuldas Tantee, plaintiff, for the sake of her ornaments valued at rupees 13; 2nd count, being accessary after the fact of the abovementioned theft with murder; 3rd count, privity to the abovementioned theft with murder.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. Taylor, officiating sessions judge of Beerbhoom, on the 18th September, 1854.

Remarks by the officiating sessions judge.—The deceased is the daughter of Komuldas, inhabitant of Keenjurrea, aged eight years, and is stated to have been murdered for the ornaments (valued at Company's rupees 13) she was wearing on the day the occurrence took place, 9th Bhadoon, or 24th August, 1854.

The prosecutor (the father) states, on the 9th of Bhadoon, he went to the *hatt* of Hatumpore early in the morning and returned home next day, when he was informed that his child, Pursuno Myee (deceased) was missing; that she was last seen in company with prisoner No. 1, Soosaree Agoorin, at about 8 A. M. of the 9th; that he went with the darogah of thannah of Zulpore to prisoner's house, and ascertained from her, first, that she had seen the child fall from the bank of a tank (Coomarpooker) into the water; on search being made, no body was found; on further pressing, the prisoner then stated that the body would be found in a well, near prisoner's house. On proceeding to the spot and searching, the body appeared and was recognized by him as that of his daughter. Prisoner No. 1 then took from the thatch of her house certain ornaments which were also recognized by him (prosecutor) as those worn by his child on the day she was missed, prisoner in his presence stated she had not murdered the child, but that prisoners Nos. 3 and 4 had, and after thrown the body into the well, where found. No enmity existed between him and the prisoners. He supposes the act was committed for the ornaments worn by the child.

The five prisoners pleaded *not guilty.*

Witness* No. 1, present at the inquest held by the darogah

* No. 1, Nudearchand Dass Tantee.

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on the 10th of Bhadoon, proves the finding of the body, the producing the ornaments from the thatch by the prisoner No. 1, and the statement made by her. Witnesses* Nos. 2 and 3, corroborate this evidence.

* No. 2, Nimae Jush.
,, 3, Govind Dass Tantee.

Witness† No. 4, the medical officer in charge of this station, examined the body, and gave his opinion that the child had met with a violent death which was caused by strangulation, the marks on the neck as also the protruding of the eyes and the other indications, denoted this.

† No. 4, A. J. Sheridan, M. D.

Witnesses‡ Nos. 1, 2, 3, 10 to 19, prove the several statements made by the prisoners Nos. 3, 4 and 5, in the mofussil and before the magistrate.

‡ No. 1, Nudearchand Dass Tantee.
2, Nimae Jush.
3, Govind Dass Tantee.
10, Bukernath Dutt.
11, Bholanath Dass Tantee.
12, Ruman Sur.
13, Nizabut Hossein.
14, Nusirooddeen Mahomed.
15, Nilcomul Dass.
16, Beneemadhub Roje.
17, Radhamadhub Dey.
18, Gopal Sen.
19, Mohamed Chand.

Witness§ No. 21, a child about seven years old, statement was taken without oath, she merely proves her being with the deceased when enticed away on the morning of the 9th Bhadoon by prisoner No. 1, who took her (deceased) towards prisoner's house.

§ 21, Matunginee Chokree.

Nos. 22 and 23|| prove seeing the deceased with prisoner and corroborate the statement of the child, witness¶ No. 21.

|| No. 22, Bisto Agoorin.
,, 23, Murmo Tantee.

¶ No. 21, Matunginee Chokree.

Prisoners, one and all, deny having committed the murder, they implicate one another in their several statements, which, in the opinion of the court, should not have been taken as confessions and denominated as such by the committing officer, but rather defences entered by all, against the 1st charge in the indictment, i. e., the actual murder.

The jury* after an attentive hearing of the evidence for the prosecution and the witnesses for the defence, brought in a verdict of guilty against prisoners Nos. 1 and 2, of the 1st charge, and prisoners Nos. 3, 4 and 5, guilty of the 3d charge.

* Bukernath Dey Vakeel.
Nobokant Dey.
Bukernath Dey.
Oodhubchunder Dhur.
Ramnath Saha.
Sunker Saha.

The court, having weighed the evidence and given every consideration to the case before it, is of opinion that the prisoners, one and all, are implicated in this most cruel murder; that prisoner No. 1, from her own statement, which she does not contradict before this court, was present when the crime was committed, but she does not admit her having actually strangled the child, or enticed her to her house; the murder and disposing

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of the body, she avers, was executed by prisoners Nos. 3 and 4, who in their statements declare they were absent a short distance at work in an indigo stubble, and heard on their return home in the evening from prisoner No. 2, husband of prisoner No. 1, that the latter had murdered the child Pursuno Myee; a like statement is given by prisoner No. 5, Dhona Agoorin. Setting aside these statements of the prisoners, who are nearly connected with each other and reside within the same enclosure, the court considers there is sufficient evidence to bring home to the parties the charges of which they have been found guilty by the jury: prisoner No. 1, Soosaree Agoorin and No. 2, Nudearchand Samunt are recommended to suffer the severest penalty of the law,* as perpetrators of a wilful and cruel murder, and the other three prisoners to hard labor in irons and banishment for the period of ten years.

* Death.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The sessions judge has convicted prisoners Nos. 1 and 2, husband and wife, of wilful murder, and recommends that capital sentence be passed upon them. The evidence against prisoner No. 1, Soosaree Agoorin, arises out of her confession, which amounts to complicity. She was suspected by the prosecutor in consequence of her having told the darogah that the deceased child Pursuno Myee had gone to a tank for a certain purpose and fallen into it, the tank was searched, but no corpse was found. The prisoner was again questioned when she confessed that her husband No. 2, and prisoners Nos. 3 and 4, Gorachand, his brother, and Bykunt Jush, were present at the time of the murder by Gora Chand No. 3, of the child for its ornaments, which were removed by No. 3, and placed in the thatch and the body was afterwards carried off by him and No. 4.

By her own confessions Musst. Soosaree saw the murder committed, and she pointed out the corpse, and the ornaments which had been concealed; she is a young woman herself, and it is not probable that she alone did the deed; the child Pursuno Myee was about nine years of age, and could not have been easily strangled by one person. Her participation in the actual commission of the deed is not proved, though by her confession she is clearly an accomplice. We could not, except on the strongest grounds and unless the murder could be accounted for in no other way than in having been committed by her, sentence the prisoner under the circumstances of the case capitally. The ends of justice will, in our opinion, be satisfied with a sentence short of the last penalty of the law; we therefore sentence the prisoner to imprisonment for life with labor suited to her sex.

With reference to the prisoners Nos. 2, 3 and 4, the calendar contains no evidence, further than that afforded by their confessions, which exhibit their knowledge of the murder having

been committed, as they allege, by the prisoner Soosaree; convicting them of privity to it, we sentence them to seven years' imprisonment with irons and labor. Against the remaining prisoner No. 6, Dhona Agoorin, there is no sufficient evidence to warrant conviction, and she denies throughout, she is acquitted and must be released.

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PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

MUDDHOO CHUNG (No. 2.)

Hooghly. 1854. November 17. Case of MUDDHOO CHUNG.

The prisoner was sentenced to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunderseker Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 13th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Muddhoo Chung, was committed by the deputy magistrate under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the indictment.

Bindrabun Chung, witness No. 1. The evidence of an approver witness convicts the prisoner of having participated in five dacoities, and in his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits and concerned with them in twenty dacoities.

The prisoner's detailed confession before the same officer embraces twenty dacoities, proof of the occurrence of more than two-third, of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no cause to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court, and admits his previous confessions. I convict him of the crime charged and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We convict the prisoner on his own confessions, corroborated by the evidence of Beeshoo approver as regards one case, and by the fact of the occurrence of the dacoities detailed by the prisoner, as shown by the records furnished by the several magistrates. We sentence him as proposed by the additional sessions judge.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND SHEIKH ARAMOOLLAH

versus

HARAN MULLICK (No. 7,) PURESH MULLICK (No 8,) KHADEM MULLICK (No. 9,) AND RUFFEE MULLICK (No. 10.)

East Burdwan.

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The prisoners accused of murder were acquitted, the evidence for the prosecution being considered insufficient for their conviction.

CRIME CHARGED.—Wilful murder of Tarson Beebee.

Committing Officer.—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 25th of August, 1854.

Remarks by the officiating additional sessions judge.—The prisoners are charged with the wilful murder of Tarson Beebee, under the following circumstances, and plead *not guilty* to the indictment.

The prosecutor was a servant in the employ of the prisoner Puresh Mullick No. 8, and during his servitude contracted an intimacy with his master's sister, Tarson Beebee, who was a widow. This intimacy ripened into attachment on the part of Tarson, and when the prosecutor was discharged the service for his presumption in aspiring to the favor of one so infinitely his superior, she followed him to his home. A *neka* marriage was the result of this elopement, to the unmitigated and undisguised anger of the members of Tarson's family. About twenty days after the consummation of the marriage, i. e., on the night of the 24th June last, the prosecutor and Tarson slept in their house with closed doors. A little after midnight they were woke by a thundering at the door which at first resisted, but soon yielded to the blows applied from without. On this, the assailants rushed in and the prisoner, Haran Mullick No. 7, literally hewed Tarson to pieces with an axe, the prisoner, Puresh Mullick No. 8, ordering him to kill her, the prisoner, Khadem Mullick No. 9, holding up a lighted rag to indicate clearly the unfortunate victim at the time of slaughter, and the prisoner Ruffee Mullick No. 10, standing by with the hatchet used in forcing the door. The prosecutor escaped by climbing up to the roof and concealing himself behind some dry leaves on the cross beam of the thatch. The prisoners, Puresh and Khadem are brothers and the prisoner, Haran, their nephew.

Such are the alleged particulars of this cold-blooded and inhuman murder and the persons marginally* noticed, depose to the facts recorded. The presumptive evidence against the prisoners consists of the testimony of the four persons indi-

* Sheikh Aramoollah the prosecutor.
Gohi Sheikh, witness No. 1.
Abed Beebee, witness No. 2.

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cated in the margin,* the first of whom states that the four prisoners were present at the prosecutor's house on the night of the murder, the prisoner Haran Mullick with an axe and the prisoner Ruffee Mullick with . hatchet, the second that these two prisoners so armed drove him off when he challenged them, on hearing the disturbance in the prosecutor's house, the third that two persons armed with clubs attacked him while proceeding to the prosecutor's house to ascertain the cause of the noise going on there, and the fourth that he heard Tarson Beebee supplicate the prisoner, Haran by name, not to kill her, from an adjoining house.

* Chand Mullick, witness No. 3.
Jitee Sheikh, witness No. 4.
Johirudin Sheikh, witness No. 5.
Naim Sheikh, witness No. 6.

The civil surgeon describes the injuries, exhibited on the body of the unfortunate woman, in the following appalling terms. "The back part of the skull was entirely cut through, the brain being also extensively cut. The wound extended from the back part of the head to the face, dividing the left ear. The left hand was also cut off. There was a severe wound on the back of the left shoulder, also a severe, deep wound above the left collar-bone. The wound on the head alone would have caused speedy death."

The prisoners deny the charge and set up the plea of *alibi* which they fail satisfactorily to prove.

The *futwa* of the law officer convicts the prisoner, Haran Mullick No. 7, of the wilful murder of Tarson Beebee, and declares him liable to *kissas*. It also convicts the prisoners, Puresh Mullick No. 8, Khadem Mullick No. 9, and Ruffee Mullick No. 10, of being accomplices in the murder, and declares them liable to discretionary punishment by *acoobut*.

With the moral conviction on my mind that the prisoners compassed the unfortunate woman Tarson Beebee's death, in a savage and cruel manner, I regret to dissent from the finding: but I do so on account of some points in the evidence which appear to me defective and concomitant, a circumstance involving much improbability. As regards the former, in the first place, there is no mention made of any of the prisoners in the original information communicated to the police of the murder, a fact very essential to the validity of the evidence brought in support of the proof of recognition and identity. Secondly, there is a discordance in the several accounts of the transaction given by the eye-witnesses, as for instance, the prosecutor states that the light by which the murder was committed was thrown in through the aperture in the door, caused by the blows inflicted from without, whereas the witness No. 1 deposed before the magistrate that the prisoner, Haran Mullick, took in the lighted torch. Again, the witness No. 2 omitted altogether to name the prisoners Haran, Puresh and Ruffee, in her examination before the

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darogah, and while the witnesses Nos. 1 and 2 affirm that during the murder the prisoner Khadem held the torch, the witness No. 3 states that it was the prisoner Ruffee who carried it. There are other discrepancies of a minor order which it is unnecessary to notice. And with reference to the latter, the escape of the prosecutor under the circumstances stated. The prisoners were as furiously exasperated against him as against their female relative, he was the author of their dishonor and the object of their revenge, he was in their power, in the same hut in which they had murdered his wife, with the same means at their disposal for murdering him, and yet he escapes, though it is impossible, from the construction of the cabin in which the murder was committed, that he could have lain concealed above for one moment, as alleged by him.

Though the circumstances I have detailed make in favor of the prisoners, yet the probabilities are all against them. The exciting causes to vengeance are unmistakably disclosed by the trial, and the result cannot but raise a strong presumption of the prisoners' criminality; but the Court will judge for themselves. Doubts have suggested themselves to my mind, and in a case involving life and death, I have considered it my duty to expose them prominently. I cannot consider the prisoners guilty in the eyes of the law, and am constrained to recommend their release.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick. The evidence of the guilt of the prisoners, as charged, consists 1st, of the testimony of the prosecutor himself; 2ndly, of his brother and his mother. These all testify as eye-witnesses of the murder, and enter into details. Their evidence cannot however be relied upon. The prosecutor deposes that he and the deceased were sleeping in his house, and in the night were awakened by a hammering at the door; that he went to the door to prevent its being broken open; that one of the prisoners told him to desist; that he should be first murdered and then his wife; that seeing he could not prevent their entry, he climbed upon a shelf, or loft, and remained concealed, while the wife was being murdered, seeing every particular. There is no proof however that such a shelf or loft existed in the house, which could afford concealment for a man; and even if there had been, as the murderers were sure of the prosecutor being in the house, there being no other door or opening except that by which they entered, and as they were equally as exasperated with him, it is incredible that they did not search for, find and murder him, for there is no proof that they were disturbed in their murderous attack. The testimony of the prosecutor is therefore worthless. The testimony of the brother is in like manner utterly worthless. He testifies that he saw the murder com-

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mitted, and details the particulars and declares he saw it from within a ruin or deserted house, through the door-way of the prosecutor's house, where it was perpetrated: yet on reference to the plan of the spot no such ruin or deserted house appears to exist! The first and last depositions of the mother are so completely at variance, that no trust can be placed on her testimony.

The testimony of the other witnesses to the prosecution, is only corroborative of the testimony of the prosecutor, his brother and mother, and proves no more than that some of the prisoners were seen near prosecutor's house at the time of the attack. It is by no means however satisfactory, and when the principal evidence has proved so utterly worthless, cannot be considered of much weight. I would therefore acquit the prisoners and order their release.

Mr. B. J. Colvin.—It also appears to me that the prisoners must be acquitted in this case, for I consider the evidence against them to be very suspicious. There is in the first place, no satisfactory explanation of the escape from their vengeance of the prosecutor himself, whose life, if his story be true, they were as anxious to take as that of the deceased. They knew that he was inside the house, which, being a small one, offered no sufficient place of concealment. Again prosecutor refused to mention the prisoners' names until the darogah came, this might appear only common prudence, on his part, but one witness, Chand Mullick, declares that although he recognized the prisoners, he kept silence from the same motive. It is unlikely that he and the other witnesses, Gohi Shaikh and Abed Beebee, should thus act in concert to mention no names, when the first impulse would have been to proclaim the offenders. The difference in Abed Beebee's depositions, of where she was sleeping on the night in question, according to one story at her son's, the prosecutor, and to another at Chand Mullick's, throws discredit on her evidence. There is also a remarkable discrepancy as regards the exclamation said to have been uttered by the unfortunate deceased. She is said, according to one version, to have appealed to the mercy of Haran as she had cherished him in childhood, whereas she was very considerably younger than he, and according to another version to have, in order to save herself, told where the money, which he sought, was; altogether the impression derived from a very careful consideration of the evidence is, that it is not trustworthy. I concur with Mr. Dick in acquitting the prisoners.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND SUMEE NUSHA

versus

BAROOKHAH NUSHA (No. 9,) RUHUMUTAH NUSHA (No. 10,) SOOBRATEE PEADAH (No. 11,) DOOLLUB ALIAS DIEMOOLLAH MUNDUL (No. 12, APPELLANT.)

Rungpore.

1854.

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Case of DOOLLUB alias DIEMOOLLAH MUNDUL.

Attention drawn to distinction between neglect of duty and privity to an offence.

CRIME CHARGED.—Nos. 9, 10, 11, 1st count, murder of Khurdee, the father of the prosecutor; 2nd count, culpable homicide of the said Khurdee, the father of the prosecutor; No. 12, 1st count, being an accomplice and aiding and abetting in the commission of the said crime; 2nd count, being an accessary both before and after the fact to the commission of the said crime.

CRIME ESTABLISHED.—Nos. 9 and 10, culpable homicide and Nos. 11 and 12, being accomplices and aiding and abetting in the commission of the above crime.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 20th July, 1854.

Remarks by the officiating sessions judge.—Kubeer Sirdar had obtained a decree against Khurdee, the deceased father of prosecutor, in the Potnitollah moonsiff's court, and took out execution against person and property. On the morning of the 19th January last, Soobratee, prisoner No. 11, the peadah entrusted with the warrant against deceased's person, proceeded to his house, accompanied by Barookhah, prisoner No. 9, and Ruhumutah, No. 10, sons of the decree-holder, and Doollub, prisoner No. 12, his agent. Deceased and his son both escaped from the house on the approach of these persons, the former going to Bewaz Mundul's, witness No. 4, about two or three *russees* off, and the prisoners having followed him there, No. 12 ordered Nos. 9 and 10 to bring him out of the eastern hut into which he had gone. These two entered the hut and after a short time came out, supporting the deceased by the arms while his legs were dragged along, and in this way he was brought in a speechless state to the outer yard, where, on being let go, he rolled over and blood was seen issuing from his mouth, the prisoners went away and deceased's son, the prosecutor and wife, witness No. 5, carried him to the bank of an adjoining *nulla*, where he soon after expired. The prisoners by promising to give up the decree and kistbundee, to pay 10 Rs. for the funeral expenses and to remove the attachment of the property, which had partly been put in force by the sale ameen and his peadahs, while the above occurrences were taking place, prevented any notice being

given at the thannah and the body was buried the same evening, but the promises not being fulfilled, deceased's son six days afterwards complained, when the body was dug up and forwarded to the station, where, from the evidence of the medical officer, it appeared that deceased had met with a violent death, for two of his ribs, the third on each side, were broken, the soft parts over the whole of the ribs were contused, the lungs were inflated and congested with blood and a small quantity of blood had also extravasated into the cavity of the chest. The medical officer was also of opinion that these injuries were caused most probably by heavy pressure, though it is possible that they were the effect of blows. The above facts are established by the evidence of witnesses, Nos. 2, 3 and 4. Two of these witnesses, Nos. 3 and 4, also state that the peadah, prisoner No. 11, struck the deceased when lying in the yard several blows with a *lattee*, but from witness No. 3's account, it would appear that the peadah under the impression that deceased was shamming, poked rather than struck him. Witness, No. 4, is the only one who states that he heard a sound of scuffling inside the house, when prisoners, Nos. 9 and 10, went in to bring out the deceased, he was nearer than any of the other witnesses, two of whom, Nos. 1 and 3, were about 2 *russess* off, and No. 2 was at the opposite side of the inner yard. All the witnesses however declare that deceased made no sound when in the hut with prisoners, Nos. 9 and 10.

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The remaining two eye-witnesses mentioned in the calendar, Nos. 5 and 6, cannot be depended on; No. 5, widow of deceased, appeared to answer questions almost at random, and the latter could not have seen what she says she did from the spot on which she alleges herself to have been.

The witnesses, Nos. 7, 8 and 9, are the sale ameen of the moonsiff-ship and his peadahs, who on going away after attaching deceased's property, saw him lying senseless in the yard of Bewaz Mundul, his face uncovered and no blood or marks of blood about him. The ameen stated before the magistrate that Bewaz Mundul told him, prisoners, Nos. 9 and 10, had pulled deceased out of the house, here he omitted this circumstance until asked, when he allowed that Bewaz Mundul had so spoken, but he had forgotten it.

The prisoners' defence is, that deceased was a sickly old man and died a natural death. There is no doubt that the deceased was weak and sickly, and his being so would render him more liable to injury from violent treatment, but would not account for the broken ribs, &c. The prisoners also insinuate that the case has been got up by Bewaz Mundul out of spite against them, but this is not in any way established, on the contrary Bewaz assisted the prisoners in concealing the case at first and was sent in by the police as a defendant and not a witness; prosecutor's son and the village chowkeedar were also defendants, and the latter,

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who was present with Bewaz Mundul, when the occurrence took place, ought, I think, to have been made a witness of, or committed to the sessions, according to Circular Order No. 32 of the 5th November, 1849, with the principals, but the magistrate has sentenced him to six months' imprisonment for concealing the crime.

The numerous witnesses called by the prisoners proved nothing in their favor, witnesses, Nos. 13 and 14, go very much against them, as it shows that the villagers when called to the funeral were on the point of going away without attending it, on account of the suspicious circumstances they observed, until Bewaz Mundul and deceased's son assured them all was right. What the suspicious circumstances were, they would not fully declare, except that the body was lying outside on the dry water-course, and that a peadah had been out that day after deceased. They, as well as the witnesses for the prosecution, were evidently afraid to tell all they knew against the sons and agent of Kubeer Sirdar.

It is very difficult to say how the injuries were inflicted on deceased, no one was inside the hut, and he himself made no noise, but that he met his death from the violent treatment received from prisoners, Nos. 9 and 10, who were ordered to bring him out by No. 12, there can, I think, be no doubt. No. 11 does not appear to have taken part at all either by word or deed, for, as stated above, I think the allegation that he struck deceased is not altogether to be believed, but he was present and made no effort to stop the illegal and violent proceedings of the agents of the decree-holder and must, therefore, be considered an accessary, though not to such an extent as prisoner, No. 12.

The law officer convicted Nos. 9 and 10 of culpable homicide, and Nos. 11 and 12 of being accomplices and aiding and abetting therein, and I concurred and sentenced them as mentioned.

Sentence passed by the lower court.—Nos. 9 and 10, to be imprisoned with labor and irons for seven years each, No. 11 for three years without irons and to pay a fine of 50 Rs. in lieu of labor, and No. 12 for five years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The evidence of the medical officer proves that the deceased died from the effects of violence. The appellant (No. 12) is shown to have instigated it. We therefore reject his appeal.

We remark that the Circular Order No. 32 of 5th November, 1849, cited by the sessions judge, is only in force in the Western Provinces. The course pursued by the magistrate with reference to the chowkeedar was correct. See Nizamut Adawlut Reports for April, of this year, pages 517 to 522. Had he considered the charge of privity proved against him, he would of course have committed him.

PRESENT:

H. T. RAIKES, ESQ. *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

KENKAROO NOSHYA (No. 3.)

Rungpore.

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Case of KENKAROO NOSHYA.

Prisoner convicted of the wilful murder of his wife sentenced capitally. The plea of insanity set up in defence was not proved.

CRIME CHARGED.—Wilful murder of Nydya, his wife, on the 8th July, 1854.

Committing Officer.—Mr. A. W. Russell, magistrate of Rungpore.

Tried before Mr G. U. Yule, officiating sessions judge of Rungpore, on the 11th October, 1854.

Remarks by the officiating sessions judge.—On the 19th July last, the prisoner, Kenkaroo No. 3, reported at the thannah that the preceding day he heard from Boodoo, witness No. 1, that his, the prisoner's wife, was murdered, and that on going home he found her dead with her throat cut, and that he suspected one Bedeng, with whom he had a quarrel about some land. His deposition to that effect was taken, and the darogah proceeded to the spot, held the usual *sooruthal*, sent in the body, and on the 21st reported that in consequence of what prisoner's uncle, Sanjoo, witness No. 2, had said, prisoner had acknowledged that he himself had murdered his wife, and his confession was accordingly taken in detail to the following effect. He stated that he had, on the 18th July, been working in the fields with his younger brother; that a disease, called *batick*, with which he had been afflicted for about a year before, which seized him about once a month for two or three hours at a time and made him, it is implied, though not clearly stated, ignorant of what he did, when under its influence, had attacked him when at work; that he went home and desiring to have connection with his wife, the deceased, who appears to have been lying down in one of the huts, got on her person, and she being unable or unwilling to admit his embrace, for by his own statement she had not arrived at puberty, he cut her throat. Before the magistrate, he confessed to the same effect, with the important exception that he made no mention of the direct cause assigned in his thannah confe sion for the perpetration of the crime, merely saying that on being attacked with the disease he was subject to, he went home and cut his wife's throat.

On the trial he denied the charge, alleging that his head turns when the disease attacks him, that Bedeng* went to get a light in his house and told

* So in the vernacular and my notes, but a mistake for Boodoo.

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him and Sanjoo, witness No. 2, of the deceased being dead and he rejects his confessions.

Witnesses, Nos. 1 and 2,* the latter the uncle of prisoner, prove that prisoner came to their house from the direction of his own, one field distant, in the afternoon of the day of occurrence, and said fire had fallen on his head, that they went to his house, and found deceased lying dead there with her throat cut, a quantity of blood on the ground but none then flowing, and the knife produced on the trial lying at her side, that prisoner said he had returned from the fields and found his wife in the condition described.

* 1 Boodoo Noshya.
2 Sanjoo Noshya.

Witnesses, Nos. 3, 5, 7 and 8,† attest the prisoner's mofussil confession, none of them can write, and they are uncertain of the day on which the confession was made, and No. 8, whose evidence was taken on the 2d day of trial, states that he did not hear the prisoner assign the direct cause mentioned above which induced him to commit the murder.

† 3 Beegoo Noshya.
5 Juggunnath.
7 Hasil.
8 Kanohea.

Witnesses, Nos. 1, 2 and 3,‡ prove the finding of the body with the throat cut. Witness, No. 4,§ the surgeon, was unable to examine the body from its advanced state of decomposition.

‡ 1 Boodoo Noshya.
2 Sanjoo Noshya.
3 Beegoo Noshya.
§ 4 Dr. J. R. Walter.

Witnesses, Nos. 9, 10 and 11,|| prove the prisoner's confession before the magistrate, but two of them in their examination before the said confession was read to them, state that prisoner did assign his reason above mentioned for the act, and they cannot satisfactorily explain why such reason is not mentioned in the confession, which is attested by the magistrate.

|| 9 Attaoollah.
10 Ashmut Ullah.
11 Buran Ullah.

The evidence of the other witnesses, Nos. 13 and 14,¶ for the prosecution, the former, the mother of prisoner, absent at the time of the occurrence, and the latter, the mother of deceased and residing some distance off, need not be alluded to now. The above is the sole evidence that a murder was committed, and that prisoner was the perpetrator of it. The witnesses to the *sooruthal* prove the fact of a murder, which indeed is not denied by the prisoner or any one else. That the prisoner was the murderer is not proved, except by his own confession to the police and the magistrate. The witnesses to the former are certainly not the best of their kind, they do not seem to have a very clear recollection of particulars connected with the confession, but still I can see no reason for disbelief-

¶ 13 Poosoo Bewa.
14 Doolye Bewa.

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ing their statement that prisoner did voluntarily confess the murder of his wife to the darogah. Every point therein agrees with his subsequent confession to the magistrate, with the one important exception noted above, and no cause for suspecting its genuineness appears from any other circumstances in the case. The confession before the magistrate too, I see no reason to doubt was voluntarily made, in spite of two of the witnesses to it having stated that the prisoner acknowledged himself more guilty than the written confession itself shows he did. The witnesses acknowledge they saw the confession written down, heard it read over afterwards and signed it, and they recognized their signatures. There is no circumstantial evidence, except the fact of the prisoner telling witnesses, Nos. 1 and 2,* that fire had fallen on his head and such a phrase, meaning only that a great misfortune had befallen him, cannot be held to imply of necessity that he had any hand in his wife's death. The prisoner himself, though he now denies his confessions, does not assert that they were extorted from him, his mother, uncle, mother-in-law and neighbours make no accusation either of that kind, and do not attempt to insinuate that any person but the prisoner committed the murder, they seem tacitly to admit his guilt and endeavour to excuse him on the ground of insanity. For these reasons, the law officer concurred with me in believing the prisoner's confession that he was the murderer of his wife.

* 1 Boodoo Noshya.
2 Sanjoo Noshya.

It is now necessary to consider the plea of insanity. Prisoner, for about a year past has, according to the witnesses, been afflicted with *batick rog*, that is, literally, flatulency, but in this case a kind of hypochondria, according to his mother, witness No. 13.† This disease attacked him occasionally and lasted for four or five days, during which he used to beat her and his brother, and when on recovery he observed their sulkiness and was told the cause, he said he knew nothing about it. None of the other witnesses‡ (his brother, witness No. 12, could not be examined from not understanding the import of the oath) had ever seen him under the influence of this disease, they were only told by his mother that prisoner beat her when he had the disease, they state that he was exceedingly passionate, getting into a violent rage when any thing annoyed him, that he went about alone, did not like talking, &c. they call him a "*pagul*" or half a "*pagul*" or

† 13 Poosoo Bewa.

‡ 1 Boodoo Noshya.
2 Sanjoo Noshya.
7 Hasil.
14 Doolye Bewa for prosecution.
3 Beegoo.
8 Kanchea.
15 Kenkar.
17 Allee
18 Sadulla.
19 Sabaz for defence.

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November 17.

Case of KENNAROO NOSHYA.

"*boura*." When in jail, he was seized, or pretended to be so, with an attack of the disease, and sent to the hospital, where he remained for altogether thirty-two days, the civil surgeon, witness No. 4,* deposes that he considers the prisoner's madness feigned, he was violent at first but on being tied and fed on a low diet, and threatened with punishment if he made a disturbance, he very soon became quiet. On the first day of trial, when required to plead, he did so at once; on the second day, when asked what he had to say in defence, he would not speak, made circles in the air with his hand and other gesticulations, stopping suddenly and becoming quiet, and after each stoppage, casting a rapid glance at the law officer and myself, which said quite plainly, what do you think of that; after being once or twice told that an answer was required, he gave it slowly and hesitatingly, as if apparently the act of recollection required an effort. He is certainly, as stated by the civil surgeon, a person of a very low grade of intellect, but there is no reason whatever to believe that he is or has been at any time in such a state as to be incapable of judging between right and wrong, unless his mother's account is credited, and I disbelieve it, for had he been in such a state for any number of times for four or five days together, as she says, some of the neighbours must have been personally cognizant of the fact. His conduct after the occurrence too; shews that he was perfectly aware that he had committed a crime, his speech to witnesses, Nos. 1 and 2,† his statement to them that he found his wife lying dead on returning from the fields, his reporting the occurrence himself next day at the thannah, and accusing a person with whom he had a quarrel, and the fact that the police did not suspect him until witness, No. 2, mentioned what he had said, cannot be reconciled with the idea of his insanity. The law officer‡ convicted him of the charge and declared him liable to *tazir*, *kissas* and *deeyut* being barred by the suspicion of insanity. I concur in the conviction. Had the prisoner in his foujdary confession assigned the same cause for the murder, as he is said to have done in the mofussil, I should have felt myself compelled to recommend the infliction of a capital sentence; as the two confessions differ however on this point, and that taken before the magistrate is the most trustworthy, and as there is no other evidence against him but that confession, it must be taken as a whole, and he must be allowed the benefit of his own statement that he killed his wife without any reason while under the influence of a disease, which temporarily affected his mind. This excuse though utterly unsupported may be permitted to bar a

* 4 Dr. J. R. Walter.

† 1 Boodoo Noshya.
2 Sanjoo Noshya

‡ The *futwa* of the law officer. Opinion and recommendation of the sessions judge.

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NOSHYA.

capital sentence, but no more, and I beg therefore to recommend that he be sentenced to imprisonment for life with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We concur with the sessions judge and the *futwa*, in convicting the prisoner of the crime of murder, which is fully proved by his own admissions in the mofussil and before the magistrate.

With reference to the plea of insanity set up by him, and the remarks of the sessions judge, recommending the infliction of a mitigated sentence, in consequence of the prisoner having stated, in his second confession, that he was at the time under the influence of a disease, which temporarily affected his mind, we would remark that it is hardly necessary to tell the judge that unless the prisoner's mind was so affected that he could not distinguish between right and wrong, the mere effect of bodily disease, in irritating his temper, cannot be regarded as forming any sufficient ground for mitigation of punishment in a crime of this nature. The medical evidence in this case and the facts on record leave no doubt in our minds as to the perfect sanity of the prisoner, the most has been made by the witnesses of some bodily ailment, under which the prisoner has occasionally suffered, to make it appear that his intellects were temporarily affected by the disease, but their account only produces a conviction that the prisoner is a man of savage and irascible temper, which he keeps under little or no restraint, when suffering from bodily ailment; further than this, we give no credit to their statements and agree with the sessions judge that the prisoner's plea of mental aberration is "wholly unsupported."

Considering then that this atrocious crime must have been committed by him, when in the full possession of his senses, and discloses no single extenuating circumstance to plead in his behalf, we must allow the law to take its course and sentence the prisoner to suffer death.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS. *Judges*

GOVERNMENT

versus

Hooghly. MODHOO BAGDEE ALIAS KOLOO MODHOO BAGDEE.

1854.

November 17.

Case of MODHOO BAGDEE alias KOLOO MODHOO BAGDEE.

The prisoner was sentenced to transportation for life, as having belonged to a gang of dacoits.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunderseker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 14th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Modhoo Bagdee alias Koloo Modhoo Bagdee, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the indictment.

The evidence of an approver* witness convicts the prisoner of having been concerned in three dacoities, and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits and taken part in fifteen dacoities under different leaders.

* Gopall Dooby, witness No. 1.

The prisoner's detailed confession before the same officer, embraces fifteen dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court and admits his previous confessions. I convict him of the crime charged and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The prisoner confirms his former confessions, at the trial before the additional sessions judge, and admits that the evidence of the approver witness, who deposes to the prisoner having been with him at three dacoities, is true.

The Court, therefore, convict him of the charge, and sentence him as recommended by the additional sessions judge.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MORAD CHOWDHRY.

West. Burdwan.

1854.

November 17.

Case of MORAD CHOWDHRY.

Prisoner convicted of perjury, in having made two contradictory statements before a deputy magistrate, sentenced to three years' imprisonment. Appeal rejected.

CRIME CHARGED.—Perjury, in having on the 4th October, 1853, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the deputy magistrate of Boodbood, "that he saw Brijo Ghur engaged in the riotous attack on the dwelling-house of the moonsiff of Sonamookhy, attended with plundering the property," and in having on the 29th June, 1854, again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the said deputy magistrate of Boodbood, "that he did not see the aforesaid Brijo Ghur in the time of the riot." Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Moulovee Gholam Ushruff, deputy magistrate of Boodbood.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 10th September, 1854.

Remarks by the sessions judge.—The prisoner was a witness, on the part of the moonsiff of Sonamookhy, in a case of plundering, &c., against a large number of the inhabitants of that place, among whom was the individual named Brijo Mohun Ghur, alluded to in the quotations embodied in the charge.

The first deposition was given when the deputy magistrate went to investigate the case on the spot, and the second after Brijo Mohun Ghur had been apprehended, and it became necessary to confront him with the witnesses, who had deposed to his presence at, and participation in, the disturbance. The second answer, quoted in the charge, was given to a question put to the prisoner by Brijo Mohun Ghur himself. The actual words were, "I did not see you at the time of the disturbance," but these could not, for obvious reasons, be conveniently inserted in the charge, as they stood. The charge was fully proven by the evidence of the mohurrir, who wrote the two depositions, and the chuprassies or peadahs, who administered the solemn declarations, taken by the prisoner in lieu of oaths.

The *futwa* convicted the prisoner of perjury "*buzunighalib,*" or violent presumption, and declared him liable to *tazeer.*

I concurred in this finding, except that I consider the proof full and legal, and thereupon convicted the prisoner and

1854. sentenced him as noted. There were no extenuating circumstances.

November 17. Case of MORAD CHOWDHRY.

Sentence passed by the lower court.—Three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The Court, having perused the two statements made by the prisoner, find that they contain direct and positive contradictions on the matter indicated in the charge. They see no reason to interfere with the conviction and sentence and reject the appeal.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

TEELUK SHIKAREE.

Hooghly.

1854.

November 17. Case of TEELUK SHIKAREE.

The prisoner was convicted of being a professional dacoit.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly.

Remarks by the officiating additional sessions judge.—The prisoner, Teeluk Shikaree, was committed by the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. of 1843. He pleads guilty to the indictment.

The evidence of an approver* witness convicts the prisoner of having been concerned in one dacoity and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits, and taken part in six dacoities under different leaders.

* Beshoo Mundul, witness.

The prisoner's detailed confession before the same officer embraces eleven dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or the voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court, and admits his previous confessions. I convict him of the crime charged, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) After perusal of the confessions and evidence detailed above, we convict the prisoner of the offence charged against him, and sentence him as proposed.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq. *Officiating Judge.*

GOVERNMENT

versus

GOUR MOHUN GOPE ALIAS DHENGA GOPE.

Mymensingh.

1854.

November 17.

Case of GOUR MOHUN GOPE alias DHENGA GOPE.

Prisoner convicted of the culpable homicide of his sister, sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Wilful murder.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 19th September, 1854.

Remarks by the sessions judge.—From the evidence of the witnesses taken on the trial and the record of commitment, it appears that on the day of occurrence, the deceased made some cakes for the family, and the prisoner at meal time asked the deceased, his sister, to bring him some *ghee*, and on her declining and going to tell the circumstance to their mother, the prisoner became enraged and struck her with a *dao* on the left side of her head, from the effects of which she died six days afterwards. The civil assistant surgeon deposed that the deceased's death was caused by an incised wound, 2½ inches in length, on the head just over the forehead dividing the bone and penetrating the skull. The prisoner admitted both before the police and the magistrate that a dispute having arisen between him and the deceased regarding the *ghee*, he threw a *dao* at the deceased, which having struck her on the head, caused a penetrating wound and terminated in her death six days afterwards.

In this court, the prisoner confessed to having thrown the *dao* at the deceased, but not with an intent to murder her and the *dao* having hit a bamboo, struck the deceased on the head. The prisoner also admitted his mofussil confession, when read over to him and urged no defence. The jury, who sat with me on the trial, gave in a verdict of culpable homicide against the prisoner, and in concurrence with them I sentenced the prisoner to seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We have perused the evidence of the deceased woman, and find she states distinctly that the prisoner in his anger, at not procuring the *ghee* he asked for, took up a *dao* and inflicted a blow on her head, this blow proved mortal. The attempt of the prisoner to palliate his act by saying that he only threw the *dao*, which struck a bamboo and then wounded her is evidently an invention. We see no reason to interfere with the sentence passed upon him.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

CHAKUR GORAE AND GOVERNMENT *versus* NUBOO NAPIT CHOWKEEDAR.

West Burdwan.

1854.

November 17.

Case of NUBOO NAPIT CHOWKEEDAR.

The prisoner a chowkeedar, was convicted of burglary and sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—Burglary in having broken open the door of the plaintiff's house, on the night of 5th August, 1854, corresponding with the 22nd Srabun, 1261, and stealing therefrom property, valued at R. 1-14.

CRIME ESTABLISHED. Burglary in having broken open the door of the plaintiff's house and stealing therefrom property, valued at R. 1-14.

Committing Officer.—Mr. H. S. Porter, deputy magistrate of Mungulpore.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 15th September, 1854.

Remarks by the sessions judge.—The prisoner broke into a hut within the *enceinte* of the prosecutor's *baree.* While he was there, the prosecutor awoke and went out for a necessary purpose. This was at about 3 o'clock in the morning of the 6th August. On coming back again, he heard a noise in the hut, in which the prisoner was, and on going up to it, found the padlock and staple of the door lying outside, and saw the prisoner come forth with a *lotah* and *thalah* in his two hands. As soon as seen, he fled, and throwing away the property, got over a part of the wall of the *enciente* and ran towards the house of the woman, *Modee Chandalin,* witness for the defence, No. 11, who was his concubine. On the prosecutor's calling out *chor, chor,* the chowkeedar, *Nuffur Moochee,* witness No. 8, and others came up and, with them, pursued the prisoner, who entered the door of *Modee Chandalin,* which was open, and hid himself. The woman closed and fastened the door, and, when summoned to give up the fugitive, said she would not do so till morning. Upon this the pursuing party, with the chowkeedar, *Choto Kartick,* witness No. 1, and others who had come up *ad interim,* surrounded the house and watched it. A little before dawn, when the witness *Choto Kartick,* who was on guard at the door and had a lighted *cheragh* in his hand, was engaged in pouring oil into it, the prisoner, who was evidently eyeing him from the inside, rushing out and knocking him down, ran off. All the persons surrounding the house, including *Choto Kartick* pursued him and he was captured by the latter, in the fields, about sixteen *russees* from *Modee's* house, after he had received a blow from a

1854

November 17.

Case of Nuboo Napit Chowkeedar

latter. No one but the prosecutor saw the prisoner come out of the hut, with the property in his hands and then throw it down and fly, nor was he recognized before he entered *Modee's* house, but all the rest of the above circumstances were fully proven and the prisoner was never lost sight of, by any of the pursuing party, between *Modee's* house and the field where he was apprehended. He said nothing on that occasion and after his capture, up to which the prosecutor remained with the pursuing party. The witnesses saw the *lotah* and *thalah* lying where the prisoner had thrown them and the padlock and staple of the door, on the ground near the hut, which had been entered. A proper petition was presented at the thannah, as per Regulation II. of 1832, and the darogah made a *sooruthal,* which was duly sworn to. The *lotah* and *thalah* were also duly identified.

The prisoner, who, as was disclosed by the evidence, was chowkeedar of prosecutor's *para,* at the time of the burglary, and also his barber, pleaded *not guilty* and affirmed, that the case had been got up against him, by the prosecutor and other residents of the village, from enmity arising out of his connexion with *Modee Chandalin.* He also pretended that he had gone to that person's hut, at 7 or 8 in the evening and never left it until he was made prisoner, in the morning. His witnesses, the said *Modee* and her mother *Tara,* witness No 12, supported his averments, but their statements were discrepant and evidently untrustworthy. It appeared that witness, No. 8, *Nuffur Moochee,* was acting for the prisoner, when the burglary took place, but there was no reason to suppose that he had joined prosecutor in getting up the case, nor that there was any enmity, or conspiracy against him on the part of the villagers.

The *futwa* of the law officer found the prisoner guilty on violent presumption, and as I approved thereof, I convicted him of the crime charged, and sentenced him as noted. It was at the same time ordered, that the property should be returned to the prosecutor.

Sentence passed by the lower court -Two years' imprisonment with labor in irons and one year in lieu of stripes, and one year more in consequence of his being a chowkeedar, total four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut. - (Present: Messrs. H. T. Raikes and J. H. Patton.) This is a case dependent upon the credibility of the evidence, and as the judge, who examined the witnesses, records his belief in the statements made by those cited for the prosecution, the Court find no reason to impugn it, and reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges*

KISTOMOHUN BERAH AND GOVERNMENT

versus

JAN MAHOMED CHAPRASSY (No. 9,) KEENOO CHAPRASSY (No. 10,) AND SHEIKH SALEEM (No. 11.)

Hooghly.

1854.

November 18.

Case of JAN MAHOMED & others.

The proof being reckoned complete against the prisoners, their appeal was rejected.

CRIME CHARGED.—Riot attended with the severe wounding of Kistomohun Berah.

CRIME ESTABLISHED.—Nos. 9 and 11, riot with severe wounding, No. 10, being an accomplice in ditto.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 12th August, 1854.

Remarks by the officiating additional sessions judge.—The prisoners are chaprassees attached to the overseer of the Government embankments; on the 12th of June last, they appear to have been sent to the prosecutor with a message from the overseer requiring his presence. The prosecutor was at the time occupied in reading an order from the darogah, prohibiting the trespass of cattle on the embankments, in conformity with instructions from the magistrate, and refused to go, alleging that he had nothing to do with their sahib, or master. On this, the prisoners laid violent hands on him and dragged him out of his house with the view of compelling him to accompany them. He broke away from them and in endeavouring to re-enter his house, fell down by coming in contact with a projecting beam. On this, the prisoners rushed on him and Jan Mahomed, prisoner No. 9, gave him a sword cut on the left elbow and Saleem Sheikh, No. 11, another across the back, the prisoner, Keenoo No. 10, being present and the first to seize and bring the prosecutor out of the premises. The proof as to the riot and assault is quite conclusive. The civil surgeon describes the arm-wound as very severe and is apprehensive that the use of the limb will never be perfectly restored. The wound across the back is comparatively slight. As this cutting and wounding was sudden and unpremeditated, I have made each prisoner responsible for the part actually taken by him in the unlawful proceedings.

Sentence passed by the lower court.—No. 9, sentenced to be imprisoned with labor and irons for five years. No. 11, without irons for three years and to pay a fine of 30 rupees within one month, or in default of payment to labor until the fine be paid or the term of his sentence expire, and No. 10, without irons for one year and to pay a fine of 30 rupees within one month, or in

default of payment to labor until the fine be paid or the term of his sentence expire. 1854

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The case is fully proved by the evidence on the record. The witnesses, brought forward by the prisoners, know nothing of the matter. We judge's order in appeal.

November 18. Case of JAN MAHO

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges*

SHAIKH PYAROO AND GOVERNMENT

versus

SABOO SHAIKH DAGEE.

Moorshedabad 1854. November 18. Case of SABOO SHAIKH DAGEE.

The prisoner's appeal was rejected, his guilt being evident.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, Shaikh Pyaroo, from which property to the value of Rs. 56-15, was plundered; 2nd count, receiving and possessing the stolen property, knowing the same to have been acquired by the said burglary.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 29th August, 1854.

Remarks by the sessions judge.—The following eye-witnesses, Kalee Singh, Jeetun chowkeedar, Janoo chowkeedar, Neroo Kandhoo, &c., prove that on the night of the 10th August, 1854, the prisoner burglariously entered the prosecutor's house and stole therefrom property to the value of Rs. 56-15. He was arrested inside the house and the property was found near a hole made in the wall, outside the house. The prisoner denied the charge, and in his defence stated that he lived in the house of the prosecutor, but this plea was entirely unsupported. His own witnesses, as well as those for the prosecutor, deposed to the contrary, and stated that they did not recognize the prisoner.

I considered the charge against him proved. He was on several previous occasions imprisoned for theft and knowingly receiving stolen property as well as for bad character. In the month of July last, he was committed on a charge of burglary, but released for want of sufficient evidence to warrant his conviction, and he committed this burglary almost immediately after his release. He appears to be a professional burglar; concurring with the *futwa* of the law officer, I convicted the prisoner of burglary and theft upon full legal proof, and sentenced him

1854. to eight years' imprisonment in banishment with hard labor in irons.

November 18. *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner had entered the house and already removed some things out of it. The chowkeedar saw the hole, cried out to the proprietor, who with others unfastened the door and found the prisoner inside. The chowkeedar had in the mean time prevented his egress through the hole. We confirm the sessions judge's sentence.

Case of SABOO SHAIKH DAGEE.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

Case No. 1.—Committed in May, 1854.

GOVERNMENT

versus

HARRORAM DASS (No. 1.)

Case No. 1.—Committed in August, 1854.

GOVERNMENT AND RAMCHAND PANDAH

Midnapore.

1854.

November 18.

Case of HURRORAM DASS & others.

The proceedings were quashed, the magistrate having gone into the charge of uttering a forged deed at the instance of the Register of deeds.

Para. 4 of C. O. dated 13th March, 1846, declared to be still in force.

SRINATH CHURN BHOOYEA (No. 1,) GUDDADHUR BAG (No. 2,) AND BEHAREE POTDAR (No. 3.)

CRIME CHARGED.—No. 1, 1st count, forgery, knowingly, wilfully and fraudulently issuing or giving effect on the 13th March, 1854, to a forged document, viz., a deed of sale of Hoodah Doorba Chuttee, Pergunnah Kaseejorah, bearing date the 19th Phalgoon, 1259, knowing the same to be a forgery by presenting it to the register of the district for registration; 2nd count, knowingly, wilfully and fraudulently issuing or giving effect to a forged document, viz., a *mookhtearnamah*, knowing it to be a forgery, empowering the said prisoner to cause the deed of sale aforesaid to be registered.

CRIME ESTABLISHED.—Wilfully and fraudulently attempting to give effect to a false deed, knowing it to be false.

CRIME CHARGED.—Nos. 1 and 2, 1st count forgery, wilfully and fraudulently attempting to give effect to a forged document, viz., a *byenameh* or a deed of sale of Hoodah Doorba Chuttee, Pergunnah Kaseejorah, bearing date the 19th Phalgoon, 1259, knowing the same to be a forgery, by presenting it to the Register of deeds for registration on the 13th March, 1854; 2nd count, Nos. 1 and 2, and 1st count, No. 3, being accessaries to the above charge, both before and after the fact.

1854.

November 18.

Case of HURROSAM DASS & others.

CRIME ESTABLISHED.—Accessaries both before and after the fact, in wilfully and fraudulently attempting to give effect to a false deed, knowing it to be false.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 11th September, 1854.

Remarks by the sessions judge.—It is in evidence that previous to the year 1259, Umlee, the prosecutor, who is the proprietor of Mehal Doorba Chuttee, was at issue with his ryots and that the latter entered into a *dhurumghut* or holy alliance to resist the former in recovering his rents. The prisoner No. 3, Beharee Potdar, was the leader and adviser in this affair, and he and some others his co-adjutors sought the advice and assistance of the prisoner No. 1, Srinath Bhooyea. Srinath at first attempted to reconcile the disputants, but finding that of no avail he proposed to the prosecutor to take a *durputnee* lease or a farm of the estate, intimating that the ryots would never be pacified until some such arrangement was made. Prosecutor declined to accede to Srinath's proposals and a great deal of ill-feeling arose between them which terminated in Srinath's, aided by Beharee Potdar, endeavouring to usurp possession by proclaiming to the ryots that he had taken the estates in lease, and prohibiting them to pay rent to any one else. A riot subsequently ensued, the prosecutor's cutcherry was attacked and his tehsildar assaulted, and the prosecutor was compelled to seek the protection of the magistrate, when both the prisoners Srinath and Beharee Potdar were bound down in recognizances to keep the peace. Their attempts to get possession having thus been defeated other means were resorted to, which have resulted in this prosecution. It is likewise in evidence that about the 22nd or 23rd of the month of Phalgoon, 1259, prisoner Srinath Bhooyea, No. 1, and Beharee Potdar, No. 3, and several others assembled at the house of Srinath and were engaged in fabricating some documents, with a view to deprive prosecutor of his village. Due intimation of what was going forward was sent by letters, by the witnesses Ramnarayn Bhooyea No. 2, and Gunganarayn Bhooyea No. 3, (who are uncles of, and live in the same homestead with Srinath) to prosecutor with whom they were on terms of friendship, and they recommended him to take measures to defeat the prisoner's proceedings. The prosecutor accordingly forwarded the letters marked in the calendar F. G. H. to his mookhtear at Midnapore, who acting on his master's authority presented a petition to the Register, setting forth that a *putnee bynamah* had been executed by the prisoners Nos. 1 and 2, transferring the *putnee* lease of Doorba Chuttee, &c., to the latter, that the whole was a forgery and praying that the deeds, if presented for registration, might be attached. It is

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further in evidence that on the 13th March, 1852, the prisoner No. 2, applied through his mookhtear Harroram Dass the prisoner No. 1, of the calendar for the month of May, to register the deeds A and B, the Register acting on the previous information he had received refused to register them until the prisoner Guddadhur appeared in person. The prisoner on 21st March, through his mookhtears, demurred to this order and urged that since Guddadhur had appeared by his constituted attorney his personal attendance was unnecessary. The Register affirmed his previous order from which an appeal was preferred to the judge by the prisoner Guddadhur's *vakeels*, Aboolfurreh, Ubhoychurn Bose and Aboolfuzul, who on the 8th of May, 1852, upheld the Register's order. The prisoner Guddadhur, thus failing in his attempts to secure the registration of the deeds, presented a petition to the Register on 24th June, 1852, through his mookhtear, repudiating the *putnee bynamah* and denying that he had been a party to the transfer therein alluded to. It is also in evidence (*vide* deposition of witness Goopeenath Bhooyea No. 8, Kundo Gurree No. 9, Golam Nubbee No. 10, Kalachand Panjah No. 11, Aboolfurreh No. 13, Sreehuree No. 29, Kaleechurn Dass No. 34, Srinath Potdar No. 35, Purrikhit Bag No. 36, &c.) that about the end of the month Phalgoon, 1259, the prisoner Srinath Bhooyea No. 1, and prisoner Beharee No. 3, visited Midnapore and then and there employed the prisoner Harroram Dass to file the exhibits A and B, in the Register's office to be registered; that both these parties were accessory to the filing of the petition of remonstrance against the Register's refusal to register the deeds and of the appeal preferred from his orders to the judge; that they and the prisoner Guddadhur were actively engaged, before a charge of forgery was preferred against them in the magistrate's court, in endeavouring to hush up the matter and also in soliciting the interference of influential parties about the courts to reconcile the disputants. The prisoner No. 1, Srinath in his defence throws all the responsibility on Guddadhur Bag and pleads that the witnesses Nos. 2, 3 and 8, are his enemies, their evidence biassed and not to be relied on. He also pleads an *alibi* from the month of Mag to the month of Chyte. The prisoner Guddadhur Bag pleads that he was utterly ignorant of the whole affair till the 24th June; that the prisoner Srinath is the fabricator of the forgery to serve his own malicious ends, and that he (Guddadhur) was absent from home when the deeds were filed in the Register's office. The prisoner Harroram Dass pleads that he was ignorant the deed was a forgery when he filed it, and Beharee Potdar pleads that his name has been included in the charge by the prosecutor, because he has long been at enmity with him. Srinath further demurs to the trial in this court, on the ground that he has been once acquitted by the magistrate and cannot therefore a second time be put on

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his trial for the same offence. The evidence is, I think, complete and conclusive that Srinath Bhooyea, if not the actual fabricator of the deed was the prime instigator of it, and that it was prepared under his immediate guidance. The witness No. 8, Goopeenath Bhooyea, swears that the exhibit B, a copy of the *bynamah*, is in the hand-writing of Heeralal a school-master in Srinath Bhooyea's service, and that the *mokhtearnamah* (exhibit C) is written by Kalee Dass Roy formerly in Srinath's employ. Srinath's connection with the deed from the time of its arrival at Midnapore, to the date of its transfer to the magistrate, by the Register, is corroborated by witnesses, whose testimony cannot be doubted. His plea that having once been acquitted by the magistrate, he cannot again be put on his trial for the same offence is not tenable, when the magistrate originally committed this case, it was remanded to him under the powers vested in this court by the Circular Orders of the Nizamut Adawlut No. 70, dated 14th November, 1851. On perusing the record, *before taking any evidence*, it appeared to me that the proceedings were incomplete. In the first place there was no prosecutor (except the Government) without whom it was clear that the true merits of the case could not be elicited and whose presence, under the circumstances, was absolutely requisite. Further evidence which had not been taken was available, calculated to bring home the charge to others besides the party committed, and the magistrate was therefore directed to hear it, and then to exercise his discretion in reference to the commitment, this order was in conformity with the Circular Orders of the Sudder Court No. 177, dated 13th November, 1816; again the magistrate in his first *roobacaree* of commitment recorded his opinion, that all the parties *were guilty*, but that he refrained from committing, lest the sessions court should not be satisfied with the evidence against them. If the magistrate believed them to be guilty he had no power to acquit them Moreover, an acquittal by a magistrate in cases where he has no final jurisdiction is only conditional, the Sudder Court have ruled that an acquittal by a magistrate of prisoners charged with crimes which would render their commitment to the sessions necessary, if proven, is no bar to their being put on their trial at any future period, *should further evidence render such a measure expedient*. The present case was remanded for further evidence as indicated in my letter to the magistrate No. 64, dated 7th June, 1854, and the commitment of the prisoner Srinath was

The Sudder Court is of opinion that in cases of forgery, a prosecutor is necessary. *Vide* case of Government *versus* Ramkanahee Chowdhooree mookhtear, appellant, dated September 24, 1851.

Seebun Paudey *versus* Achmit Singh, wilful murder, October 21, 1844.

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the result of the magistrate's carrying out these instructions. The law quoted by the prisoner Act XIX. of 1848, is inapplicable; Guddadhur Bag in his defence lays great stress on the circumstance of his having denied his participation in the fabrication of the deed, and all knowledge of its existence; but his denial was not made till he found there was no alternative to save him from the consequences that were likely to follow the inquiry in the magistrate's court. The deed was filed for registration on 13th March, and when its registration was refused, Guddadhur through his mokhtear remonstrated against the Register's order that his personal attendance was not requisite, and not satisfied with the orders of the Register, who affirmed his previous decision, appealed to the judge on the 8th May through his *vakeels;* failing to obtain a reversal of the Register's order, he then as a last resource gave a petition through his mokhtear to the Register on the 24th June, repudiating the deed, and expressing his entire ignorance of its contents. He wishes the court to believe that all the petitions, *mokhtearnamahs,* and *wakalutnamahs*, executed in his name and filed in the several courts between 13th March and 24th June, are forgeries, and that the last *mokhtearnamah* authorizing the petition of the 24th June to be filed, is the only one deserving of credit. The presumption however is strong, that the forged deed was filed for registration with the cognizance and approval of the prisoner. It is in evidence that he was at Srinath's house in the month of Falgoon 1259, and was then warned by the witness No. 2, of the consequences of having any thing to do with the forgery, which Srinath had then in contemplation. It is also clear that Aboolfurreh, who filed the petition of appeal against the Register's order, has been for years and *still is* Guddadhur's vakeel, and that subsequent to the judge's order in appeal, and prior to the petition of the 24th June, both he and Srinath sought the counsel of Aboolfurreh and other respectable parties whose evdence has been taken, how they were to avoid the consequences which were likely to follow the inquiry then going on in the courts. Guddadhur's guilty knowledge is further proven by the exhibit. S, a decree passed by the moonsiff of Pertabpore on 29th June, 1853, in which the prosecutor's nephew Notuber Panegrahee was the plaintiff versus the prisoner Srinath Bhooyea and Guddadhur Bag the defendant, the plaintiff sued to render null and void a *putnee bynamah,* and it was clearly proved that the deed was a forgery and fabricated on 19th Falgoon, 1259, by Srinath in favor of Guddadhur Bag, and presented by the prisoner Hurroram Dass in behalf of Guddadhur for registration on 13th March, the same day as the deed, now the subject of inquiry, was filed. Guddadhur Bag never attempted to repudiate that deed, nor to prevent its registration, nor to deny his guilty knowledge that it was a forgery, till cited to appear in the moonsiff's court when further

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concealment was impossible. The prisoner Hurroram Dass cites witnesses to prove that Guddadhur Bag was the party who sent him the *bynamah* to be registered, but their manner of giving their testimony and their prevarication show that they have been tutored for the occasion; throughout the trial it has been the object of the prisoner Srinath and Guddadhur to implicate each other; Srinath from a feeling of revenge because Guddadhur repudiated the *bynamah*, and Guddadhur in the hope of throwing the entire responsibility of forging the deed and giving it effect on Srinath. They do not however succeed in my opinion in clearing themselves of the charges preferred against them; the crime of which they are guilty was not committed in self-defence, but was an act of aggression and their filing the deed in the Register's office was with a view to make the Government courts subservient to purposes of robbery and extortion, they are therefore deserving of severe punishment as principals and instigators. The prisoners Hurroram Dass and Beharee were merely the creatures and instruments of the other two prisoners, and, though guilty, their guilt is not of an equally grave nature. The assessors, with whose aid the trial was held, declare the prisoners guilty of the crime of which they are accused. I concur in this finding and sentence the prisoners as indicated in the body of the statement.

Sentence passed by the lower court.—No. 1, committed in May, 1854, to be imprisoned without irons for three years and to pay a fine of fifty (50) rupees within one month, or in default of payment to labor until the fine be paid or the term of sentence expire, Nos. 1 and 2, committed in August, 1854, five (5) years' imprisonment each without irons and to pay a fine of two hundred (200) rupees within one month, or in default to labor until the fine be paid, or the term of sentence expire, and No. 3, three (3) years' imprisonment without irons and to pay a fine of fifty (50) rupees within one month, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The four prisoners were sent to the magistrate by the Register of deeds on the 8th September, 1853. The magistrate on the 1st October following, held a proceeding on the prosecution of Government against them and commenced judicial investigation of the case, which ended in the commitment of Hurroram Dass only, on the 9th May, 1854, the others being released. The sessions judge observing that Government was the only prosecutor, remanded the case by letter, dated 7th June, 1854, for one of the parties, at whose instance the forgery was brought to light, to be associated with Government, and advised the commitment of others who appeared to him to be connected with the case, who were not before him. Ultimately

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the three others were committed on the 7th August, 1854, and all four were sentenced by the sessions judge on the 11th September last.

It is urged in appeal, relying on the precedent of Nursingh Pandey decided on the 25th ultimo, that this prosecution is void *ab initio*, as it was not instituted before the magistrate by the party aggrieved. We hold the objection to be good, if a judge was not held competent to send a case of forgery (not arising in a pending suit under Act I. 1848,) to the magistrate, *a fortiori* a Register of deeds cannot.

This being fatal to the commitment of Hurroram, it follows that the commitment of the others on the remand of his case cannot stand. The sessions judge was quite wrong in his instructions to the magistrate of 7th June, 1854. He therein assumed the character of a Government prosecutor, which does not belong to his office, and although the Circular Order 14th November, 1851, allows charges to be amended, it is only as regards prisoners on trial. It does not authorize the sessions judge to advise other parties being put on trial.

The Court take this opportunity of drawing attention to paragraph 4 of Circular Order No. 225, 18th March, 1846, which is still in force, although its preceding paragraphs have been superseded by Act I. 1848. The prosecutors in this case should have preferred their charge before the magistrate, who is only prohibited by the above law from entertaining charges preferred by parties to *pending* civil or criminal cases, without the sanction of the presiding authority of the court in which they may be pending.

The Court observe further, that the charges are incorrectly worded, being forgery, &c in giving effect to a deed, &c. The acts of forgery and uttering, are so distinct that there cannot be a charge of forgery in giving effect to a forged deed, for forgery may be committed without the deed being given effect to, and a forged deed may be knowingly issued and given effect to by a party having no share in the original forgery.

Further the sentence upon Nos. 1 and 2, Srinath Churn Bhooyea and Guddadhur Bag is illegal, as labor cannot* be commuted to fine, when a sentence of five years' imprisonment is passed.

The proceedings of trial are hereby quashed, and the prisoners must be discharged from custody.

* C. O. 27th January, 1837.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., Judges.

GOVERNMENT

versus

HURDIAL SINGH (No. 1,) LUMBTOA (No. 2,) AND JUGRAM GORAIT (No. 3.)

Hazareebaugh.

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The Nizamut Adawlut considered that two prisoners should have been released by the lower court agreeably to the view taken by it and acquitted them accordingly.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Captain T. Simpson, principal assistant agent to the Governor-General, Hazareebaugh division.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 18th September, 1854.

Remarks by the deputy commissioner.—The prosecutor states that he was informed that his father had been killed by the prisoner, Hurdial, and that on coming to inspect the body of his father at Ramchurn Singh's house, he found marks of severe beating on it. His father was liable to duty work on Ramchurn's lands, whenever required. When witness came to the house, Boodhoo Bhandari had already apprehended Hurdial Singh. Also Lumbtoa and Jugram (prosecutor made this last statement with hesitation). It was Jugram who went to give information. He was apprehended when the darogah came to the place. Lumbtoa was at work till the darogah came.

The prisoners plead *not guilty*.

No. 1, witness, Beersing Manjhee. On a Saturday in Bhadon, Lulloa Saontar was at duty-work ploughing in Ramchurn Singh's field. About 8 or 9 A. M. Lalloa's plough was not making a furrow, and seeing this, the prisoner, Hurdial, struck Lulloa two blows on the back with *this* staff, and then Jugram came running and struck Lulloa two or three blows with his club. Then Lumbtoa came and struck Lulloa with his goad. Witness went to separate them and was beaten and knocked down by Lumbtoa and Jugram. The three of them then fell on Lulloa and beat him severely notwithstanding the witness's entreaties. Witness and others procured a cot and brought Lulloa thereon, in a dying state, to the veranda of Ramchurn's house, where he died about noon. Jugram and Ghinoa gave information to the darogah, Jugram was privately sent by Boodhoo Bhandari. The prisoner, Lumbtoa, is witness's uncle, Boodhoo took up Hurdial only, Jugram and Lumbtoa were taken up the following day. Blood flowed from the wounds on the head of the deceased.

No 2, witness, Gopeenath Manjhee, witnessed the fact and confirms Beersing's statement. The deceased did not strike any one. Witness is a servant of Ramchurn Singh.

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No. 3, Mohun Gowalla, No. 4, Boodhoo Ghatwul, No. 5, Munoo Taoree corroborate the foregoing evidence as to the assault by the three prisoners. The prisoner, Hurdial, is the steward of Thakoor Kanainath Singh, who is the father of Ramchurn Singh.

No. 6, Roopoo Ghatwul saw Hurdial strike the deceased with a club, Jugram and Lumbtoa interfered to save him.

No. 7, Lullit Koormee saw Hurdial strike the deceased with a club. Saw no one else strike him. Did not say before the magistrate that Jugram and Lumbtoa had interfered to protect the deceased.

No. 8, Ghinnoo Chowkeedar.—The prisoner, Hurdial Singh, was apprehended by Boodhoo Bhandari. No one else was accused at that time. Witness has called him Goordial by mistake.

No. 10, Gujjoo Gowalla, No. 11, Buccus Gowalla, No. 12, Jibram.—These witnesses prove the record of the inquest.

No. 13, Mungra Ghatwul.—At the distance of a gun-shot saw the three prisoners assault the deceased.

The prisoner, Hurdial, in his defence, states that he had been sick, and that having spoken to the deceased about his careless ploughing, mutually abusive language passed, and a personal struggle ensued. Prisoner had club, and the deceased struck him slightly with a goad. Jugram and Lumbtoa then interfered, and prisoner went away to get medicine for his ailment. The deceased walked home. This was in the forenoon. In the afternoon, Lulloa's body was brought on a cot to the Thakoor's house. Prisoner does not know how the deceased came by his death. Beersingh bears the prisoner a spite. The prisoner's witnesses prove that he was sick, and that he did not strike the deceased.

The prisoner, Lumbtoa, in his defence, states that the prisoner, Hurdial, and the deceased had a struggle together, and prisoner came to separate them. Deceased had marks of blows of a club on his back. The deceased walked towards his own house, and prisoner does not know how he died.

The prisoner, Jugram, offers the same defence as Lumbtoa.

No. 14. Latta Gowalla, No. 15, Ramjeet Sooree, No. 16, Assaram Gowalla, No. 17, Kamul Mistree, No. 18, Kassee Hazam, No. 19, Boodhoo Bhandari, No. 20, Assi Gowalla, No. 21, Garee Tailee, No. 22, Sookram Deswaree.—The witnesses for the defence say that the prisoner, Hurdial, was not sick. They have no knowledge of any matter of defence whatever.

The jury, whose names are entered below,* find the three prisoners guilty of wilful murder.

* Lalla Kallicburn Mooktear, Lalla Chunmun Lall Mooktear.

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If the testimony of the greater part of the witnesses to the fact may be received without question, it will sustain the verdict of the jury against all the prisoners. But I do not think that evidence worthy of implicit credit. My reasons for this conclusion are as follows. The information given by Ghinoo chowkeedar to the burkundazes of the police station was that Lulloa had been killed by Goordial (Hurdial), and Ghinnoo's evidence confirms this. No one else, he says, was accused at that time. Information was likewise given to the darogah by the prisoner Jugram himself, that Hurdial only had killed the deceased. And the evidence, above recorded, shows that only Hurdial was taken into custody by the village watch. The accusation against the others was not made until the darogah came to the place, and it was then made by the prosecutor, who had no personal knowledge of the facts. This accusation was made on the 13th August, and the answers of the prisoners are dated 13th and 14th. But that of Hurdial was sent up with the darogah's report, dated 14th August, while those of the others were kept back till the 19th, in which latter report, the darogah remarks that some witnesses criminate Hurdial only, and that some criminate the three prisoners. The darogah throughout calls the case one of assault, and reports that the marks of violence on the body were inconsiderable. The impression left on my mind by all this is, that the darogah has dealt dishonestly with this case. To exculpate the prisoner, Hurdial, was not possible without an entire suppression of the evidence, but to screen him by implicating others and by distortion of evidence was easy. And this course was followed. The evidence of each witness has been separately recorded by the darogah, in contravention of the rules prescribed for his guidance. The club sent up as the *lethal* weapon is long, thin and light, not by any means a dangerous instrument. Every thing that could be done to mitigate the charge against the prisoner, Hurdial, has been done. He is a man of superior caste, and the other prisoners are of low caste. As to the defence of the prisoners, that of Hurdial is of no weight and is destitute of proof. That of the other prisoners is partly supported by the evidence for the prosecution.

I believe that Hurdial alone is guilty, and his offence is of an aggravated kind. There was on the part of the deceased, no provocation given. The unfortunate man was performing duty-work, without fee or reward, and was mercilessly beaten for a trifling neglect, whether real or supposed. The recklessness with which life was taken under literally "club law," demands repression by the utmost legal severity. I consider the prisoner, Hurdial, guilty of aggravated culpable homicide, and would recommend that he be sentenced to imprisonment with hard labor for a term not under fourteen years. The other prisoners, I

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would acquit, but looking to the amount of positive evidence against them, and to the verdict of the jury thereon, I have thought it proper to leave the sentence on them to the discretion of the Superior Court.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) It was fully within the competency of the deputy commissioner, entertaining the view of the case as he has reported it, to have acquitted the prisoners, Nos. 2 and 3, irrespective of the opinion or verdict of the jury. We think that they are entitled to the benefit of the deputy's opinion in their favor, and acquit them accordingly. We concur in thinking the case proved against the prisoner, No. 1, Hurdial Singh, and pass the sentence proposed by the local authority.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

JUGUT CHUNDER ROY SEN.

24-Pergunnahs.

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Case of JUGUT CHUNDER ROY SEN.

The prisoner was convicted of presenting a forged letter of recommendation to the magistrate.

CRIME CHARGED.—1st count, forgery and fabrication of a letter in the English language, purporting to be a letter of recommendation from H. C. Metcalfe, Esq., judge of zillah Tipperah, to H. D. H. Fergusson, Esq.; 2nd count, forgery of the name of H. C. Metcalfe, Esq., judge of Tipperah on a letter in the English language purporting to be a letter from that officer; 3rd count, uttering the above forged and fabricated letter well knowing the same to have been forged and fabricated, by fraudulently presenting it to the magistrate of the 24-Pergunnahs on the 27th June, 1854, with intent, by means of the said forged letter, to obtain Government employment from the said magistrate; 4th count, fraudulently attempting to obtain employment in the police of the 24-Pergunnahs by presenting a fabricated letter of recommendation to the magistrate of the said district.

CRIME ESTABLISHED.—Uttering a forged and fabricated letter in the English language, purporting to be a letter of recommendation from H. C. Metcalfe, Esq., judge of Tipperah, well knowing the same to have been forged and fabricated, by fraudulently presenting the same to the magistrate of the 24-Pergunnahs, with intent to obtain employment in the police.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 29th July, 1854.

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Remarks by the officiating additional sessions judge.—I cannot describe this case better than in the words of the magistrate in his abstract of the grounds of commitment as set forth in the calendar, particularly as the circumstances therein detailed have been attested by him as a witness on the trial. The prisoner presented a letter to the magistrate of the 24-Pergunnahs stating it to be from Mr. Metcalfe, the judge of Tipperah. The magistrate being intimately acquainted with Mr. Metcalfe, and knowing that the said gentleman was sick at the Cape, immediately detected the forgery and asked the prisoner where he had got the letter. He replied that his *father*, Opendronarain, had sent it from Tipperah. He was immediately arrested and his statement written down, when he said that his *uncle*, Opendronarain, had sent him the letter; but on inquiry, no such man was to be found at Tipperah. The prisoner then said the letter had been given him by one Gobind Paul, but he also is not forthcoming. The magistrate adds that the letter is a palpable forgery and fabrication, and that the conduct of the prisoner proves that he knew it to be so, and that his acquaintance with the English language raises a violent presumption that he wrote it himself. The facts stated by the magistrate are clearly proved against the prisoner, he admits having presented the letter with the view of getting employment in the police.

Sentence passed by the lower court.—Imprisonment with labor and irons for three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The prisoner has appealed, asserting that he presented the letter in ignorance of its not being genuine, but no intelligence of the parties named by him could be obtained, no proof was given of his first story to the magistrate that the letter had been sent to him from Tipperah; and he afterwards admitted that that story was false. We reject the appeal.

PRESENT:
A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT
versus
BOOJURUK CHUMMAHER (No. 4,) MOZUFFER ALI ALIAS JUGRAH (No 8,) KALOO (No. 9,) SUFFER ALI (No. 10,) MEER ALI (No. 11,) SUFFER ALI (No. 13,) ABDOOL ALI (No. 15,) HASSUN ALI (No. 16,) HARI BOLI (No. 17,) MUNNOO BOLI (No. 18,) SECUNDER BOLI (No. 19,) ABDOOL ROHMAN (No. 20,) FUKEER MAHOMED (No. 21,) SOODARAM HOOLAL (No. 22,) MAGUN ALI (No. 25,) MYNUDDIN (No. 27,) ESUF ALI (No. 31,) JAFIER ALI (No. 32,) SONA GAZEE (No. 33,) MOHSEIN ALI (No. 35,) ABDOOL GUNNY (No 36,) PANCHCOUREE (No. 37,) MEER ALI (No. 38,) PETUN MOTABUR (No. 39,) OSMAN ALI (No. 44,) AND BOCHA GAZEE (No. 55)

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One of the prisoners, a boy fourteen years old, was acquitted on account of his youth.

Section 56, Regulation X. 1819, does not authorize a cumulative sentence.

The sessions judge informed that he should not have issued orders to the magistrate to bring a prisoner to trial under Regulation II. 1797.

CRIME CHARGED.—1st count, riot with intent to murder inasmuch as they, the defendants Nos. 4, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 25, 27, 31, 32, 33, 35, 36, 37, 38, 39, 44 and 55, did riotously and in an armed body forcibly oppose Mr. J. S. Rochfort, the assistant superintendent of Chittagong salt chowkies, his officers and the police, while engaged in the execution of their lawful duty, and did then and there violently assault and wound Mr. J. S. Rochfort with sticks and throw him into a tank and while therein, hurled sticks, &c., at him with intent to murder him, and did also severely assault and wound with intent to murder the police darogah of thannah Chukkerreah, Ruhmut Ali, and Soondur Singh, salt chowkie burkundazes, the police and salt burkundazes, at the same time releasing the parties who had been arrested by Mr. J. S. Rochfort for having in their possession illicit and contraband salt and articles connected therewith; 2nd count, the defendants abovementioned are charged with being accomplices in the above crime; 3rd count, the defendants are all charged with aiding and abetting in the above crime.

CRIME ESTABLISHED.—Riot with severe wounding.

Committing Officer.—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 13th June, 1854.

Remarks by the officiating additional sessions judge.—On the 3rd December last, Mr. J. S. Rochfort, assistant in the salt department, attended by a police darogah with five burkundazes

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and thirty, or forty of his own men, was escorting as prisoners for offence against the salt laws, fifteen men captured in the village of Harbung. The party at their first setting out, were met by a body of men who, however, shortly dispersed, but after proceeding as far as a village, called Burratulli, they were again encountered by a large mob of two or three hundred, who had come to rescue the prisoners, whom they demanded with threats and insulting gestures. Mr. Rochfort, having a gun in his hand, fired it in the air with the view of intimidating them, but without effect, he was immediately knocked down by a thrust in the body, and a severe blow on the head, which laid open his scalp: he was then violently forced into a tank, and pelted by the crowd with every kind of missile they could make available, clods of earth, sticks and his own *tonjon* broken up for the purpose, and his life would probably have been taken, had it not been for the conduct of two burkundazes, Goberdhun Singh and Gholam Ali, who supported him in the water, and received a quantity of the blows that were meant for him, on their own bodies; Mr. Rochfort having been stunned by the blow on the head. Several others of the party were so severely wounded as to be obliged to be put under surgical treatment; one poor man received a bad wound in the groin from a spear, which some of the witnesses say was intended for Mr. Rochfort; another man was so severely beaten that it is feared he will be paralytic for life, among these badly hurt, was Gouree Kant Ghosal, the police darogah. No defence could be even attempted by the attacked party, they called out in the native fashion, "*Dooai* magistrate *sahib, dooai* Company *bahadoor*," but it had no effect, and they were in a manner overwhelmed; the prisoners of course made their escape, or were rescued, but the rioters were not content, and savagely belaboured the unfortunate men, when on the ground and unable to resist. The principal men among the rioters were; 1st Boojuruk Chummaher, defendant No. 4. This man is of a very respectable family, he is the son of a wealthy zemindar, and had a brother a deputy collector; he was the leader and instigator of the riot; he was heard, it is said, to give orders to kill the *sâhib*, and he was the person that wounded the man in the groin with the spear; and nearly the whole of the other defendants as well as the prisoners they rescued, are his ryots and dependants; 2ndly, two brothers, Mozuffer Ali *alias* Jugrah, defendant No. 8, and Kaloo, defendant No. 9. These two young men, brothers, one of them son-in-law of another zemindar, but connection of defendant, No. 4, were the most active in the riot. No. 8, was the man that struck Mr. Rochfort on the head, and both he and No. 9 did their best to incite the others by precept and example; 3rdly, Mohsin Sikdar, defendant No. 35, this man was the leader of a separate detachment that came to help the first. Besides these, there are twenty-two others, in whose conviction by the

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law officer, I concur, and have sentenced them as follows. Boojuruk Chummaher seven years' imprisonment in irons. I have exempted him from labor under Circular Order 44, 28th March, 1807, but have imposed on him a fine of 200 Rs. or two years' additional imprisonment* under Section 56, Regulation X. of 1819, for though the releasing of prisoners is not stated as a specific charge, it is shewn in the explanation in the calendar that the riot was made for that purpose, and it is clear from the case itself that it was so: the three other individuals that I have mentioned as principals, I have sentenced to seven years each with labor in irons, and the remainder of the defendants, as per statement, to five years each, with labor in irons. Besides the above, there were twenty-seven men sent up by the magistrate; of these the evidence for the prosecution was not sufficiently conclusive against twenty-two. They were acquitted by the law officer and myself and released without being called on for their defence: against five others, the evidence for the prosecution was weak, and that for the defence strong, and concurring also in their acquittal by the law officer, they were released at the end of the trial; amongst these was one Roshun Ali, an old man and a zemindar. I was for some time in doubt as to whether I should refer his case or not to the Sudder Court; on consideration I agreed, but have directed him to be brought to trial under Sections 2 and 3 of Regulation II. of 1797, to be intermediately held to bail; the evidence in the lower court was quite sufficient to warrant the magistrate in making over the whole of those now acquitted, and he, I think, deserves much credit for his very prompt and energetic measures, had they not been so, the greater part of the defendants would never have been apprehended, the facilities for absconding or emigration being so great in this district.

* I have since found that four months in the dewanny jail is the proper commutation for 200 Rs. fine, see Sections 110 and 121 of X. of 1819; should the Court concur with me, they can alter the order.

The evidence in the case was not what could have been wished, scarcely any one but the party attacked being available, and consequently open to cavil and suspicion, but it was the best procurable, many of the witnesses varied in their recognition of individuals in my court from the depositions they had given before the magistrate, however in no case, do I think, this arose from wilful or careless mis-statement, but was rather owing to the difference in appearance of the defendants, after some months' confinement, and by testing their evidence in various ways and cross-examination, I have done my best to ascertain the truth.

Since the conclusion of the trial, I have been told that the origin of the riot was that an old lady, (the wife of Roshun Ali, defendant No. 5, above referred to) on being informed that her ryots' houses were being searched, and that some of them had

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been captured, sent a portion of her dress to Boojuruk Chummaher with a message that if he allowed such proceedings to be carried on, the dress sent was suitable for such as he; excited by this message, he collected his men and instigated the riot.

They have since received 100 Rs. each, and a perwanah from the controller.

I should have wished to have given a reward each to Goberdhun Singh and Gholam Ali for their conduct, but though meritorious, it was not in the apprehension of offenders. I therefore have not the power to do so, I shall suggest to the controller of the salt chowkies that favorable notice be taken of these two men.

There being no heading in the criminal statements of riot with attempt to murder, I have altered it to riot with severe wounding.

In connection with this case, an attempt was made to bring a case of murder against Mr. Rochfort for shooting a man and a body was exhumed, a wound cut in it, this was disposed of by the magistrate.

I trust I may be excused in requesting the Court to turn some attention to the salt arrangements in the district. A man here is obliged to pay five times the price for salt that he can make it for, and from time immemorial they have been in the habit of making it, can it then be wondered at that collisions should take place?

If I recollect right in the zillah of Pooree, the residents are allowed to have their salt at a lower rate than strangers, could not something of that sort be done in Chittagong? It is a miserably poor zillah and requires gentle treatment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) After a perusal of the petitions of appeal, and reference to the record of trial and preliminary proceedings, and after hearing the pleader for the appellants, who was present, Mr. Norris, and the Government pleader, Baboo Sumboonath, on the part of the prosecution, we see no reason for interference with the sentences of imprisonment passed on the prisoners, with the exception mentioned below. The attack of the prisoners on the salt officers, while in the performance of their duty, was an utter defiance to the authority of Government, and aggravated by severe wounding and ill-treatment. We acquit, however, the prisoner, Kaloo, on account of his youth, being a lad of fourteen years of age, and therefore presumed to be under the influence of his seniors, and direct his release. We also reverse that portion of the sentence passed on the prisoner, Boojuruk Chummaher, No. 4, which awards the penalty of a fine, and in lieu thereof additional imprisonment for two years, the fine having been awarded under Section 56, Regulation X. 1819. The expression "further" in the above section, in the

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opinion of the Court, does not mean, that both penalties are to be awarded on one and the same indictment. A person might be tried for and convicted of the first offence, and fined by the magistrate, or the same party might be indicted and committed to the sessions for the second offence, and punished, but a cumulative sentence cannot be passed on an indictment for the latter offence only.

We observe, for the future guidance of the officiating additional sessions judge, that he is not authorized to issue any such orders or directions to the magistrate, as those he has sent to that officer with respect to Roshun Ali, prisoner, acquitted by him. The utmost a sessions judge is empowered to do, in such cases, is to bring the circumstances to the notice of the magistrate, or of his superior, the commissioner, as superintendent of police. He must accordingly recall his order, leaving the magistrate to use his own discretion.

Further ordered, that with reference to the concluding remarks of the officiating additional sessions judge, a copy of his letter be forwarded to the Sudder Board.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

LOCHUN CHUNG.

Mymensingh.

1854. November 22. Case of Lochun Chung.

The prisoner was acquitted for want of proof that he had been duly sworn before the officer who took his deposition containing the alleged perjury.

CRIME CHARGED.—Perjury in having on the 7th August, 1854, deposed under a solemn declaration made instead of an oath before the law officer of zillah Mymensingh, in the case of Kartickram Chung, that he bore no relationship to the prosecutor, the same being false and having been deliberately and intentionally made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 19th September, 1854.

Remarks by the sessions judge.—It appears from the record that the prisoner was cited as a witness in the case of Kartickram Chung prosecutor, and deposed before the law officer of this district, that he bore no relationship to him, but it having appeared that he was the cousin of Kartickram, the law officer held inquiries into the matter and ascertained, through the darogah and witnesses in the neighbourhood, that he was so related,

and the prisoner in his subsequent confession admitted that he was related. In this court the prisoner urges that he told the mohurrir, who wrote his evidence in the foujdary, that he bore the relationship of "*beradurree*," that the question not having been explained to him he did not say so before. He urged no defence, and the jury gave in a verdict of guilty against him in which I concurred.

1854. November 22. Case of LOCHUN CHUNG.

Sentence passed by the lower court.—To be imprisoned for the period of (3) three years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We observe that the record does not shew that the prisoner was sworn, when he gave his evidence before the law officer. He had first been examined on oath by the magistrate, and the case had apparently been then transferred to the law officer, who should have certified, in like manner as the magistrate, to the continuation of the examination on oath. On reference by the magistrate to the law officer to ascertain if he had sworn the prisoner, he merely answered that he always did so; and the mohurrir who wrote the deposition of the prisoner before the law officer was asked at the trial whether the prisoner had been duly sworn. He replied yes, but he could not remember which one of two burkundazes had administered the oath. On reference to the calendar we find, that neither of these two has been examined as a witness on the point. We therefore, on failure of sufficient proof that the prisoner was duly sworn by the law officer, acquit him.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

Tipperah. 1854. November 23. Case of ASHRUF ALI and others.

MAHOMED SABUR

versus

ABDOOR ROHIM (No. 1,) ASHRUF ALI CHOWDHRY (No. 2, APPELLANT,) AMOOD ALI ALIAS AMOODY (No. 3,) MAHOMED ALUM ALIAS ADO MILKY (No. 4, APPELLANT,) SHOOJAT (No. 5,) SHURUFATOOLLAH (No. 6,) AND SHUMBHOO MALI (No. 7, APPELLANT.)

The evidence for the prosecution was deemed conclusive against the prisoners, their appeal was therefore rejected.

CRIME CHARGED.—1st count, dacoity at the house of the prosecutor and plundering therefrom property belonging to him, valued at Rs. 463; 2nd count, riotously assembling in an armed body, assaulting and wounding Manullah and Boharam, attacking the prosecutor's house, and plundering therefrom property belonging to him, valued at Rs. 463; 3rd count, riotously assembling in an armed body, and fraudulently distraining the property

1854. of the prosecutor under Regulation V. of 1812, with intent to plunder the same.

November 23. CRIME ESTABLISHED.—Riotously attacking the house of the prosecutor Mahomed Sabur, wounding Manullah and Boharam, and plundering him of his property.

Case of ASHRUF ALI and others.

Committing Officer.—Moulvee Golam Yeahiah, law officer with full powers of a magistrate at Tipperah.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 19th June, 1854.

Remarks by the officiating sessions judge.—The prosecutor resides in mouzah Hajeepore of which he is a one-anna proprietor.

It seems that about 7 o'clock in the morning of the 23rd of November last, the prisoners in a body of about eighty or ninety persons variously armed with spears, clubs, swords, shields, &c., attacked the prosecutor's house uttering cries of "Ali, Ali," "*mar, mar.*" The prosecutor, at the first alarm of their approach, hastily removed his women to preserve them from insult, and himself ran towards a neighbouring jungle where he hid himself. The prisoners entered the women's apartment and carried off from thence property amounting altogether (with the ready money) to rupees 463. The boxes and chest, in which most of the property had been contained, were carried off entire, none being broken open at the time of the attack. Some of the neighbours came up at the time and endeavoured to stop the prisoners' proceedings, crying out for help; when one of the prisoners named Amood Ali *alias* Amoody Paik, wounded one of those who came to the scene, called Boharam, (witness No. 6,) in the arm with a spear. Another of the neighbours named Manullah (witness No. 5,) received a blow on the left arm with a *lattee* inflicted by a man called Sooltan (not present.) The prisoners then assaulted and drove off the other persons who had come up on hearing the disturbance. The rioters then carried off the property plundered, proceeding in a westerly direction towards mouzah Jussatooah, where Adoo Milkee, the brother-in-law of Abdoor Rohim (prisoner No. 1,) resides. They deposited the property there in the house of a man named Dil Mahomed. This village is situated about eight miles distant from that where the prosecutor lives. The prosecutor, it appears, has for some time past had a dispute with the prisoner Abdoor Rohim who had wished him to sell to his brother-in-law, Golam Ali, a one half-anna share of the property belonging to the prosecutor, but which the latter refused to consent to. It appears that, subsequent to the riot, Golam Ali tried to accommodate the case with the prisoner and hush up the matter, by offering to restore to him all of the property plundered, which he had with himself. This arrangement the prosecutor refused to listen to, as he would be content with nothing less than the recovery of all that he had been plundered of. The prisoner Abdoor Rohim (No. 1,) de-

clares that the property had been distrained by him under Regulation V. of 1812, he having purchased the property, and the prosecutor being his ryot. This plea is however utterly unavailing as there is not the slightest proof to show that Abdoor Rohim, (prisoner No. 1,) has any right or interest in the property whatever; nor were any of the forms, properly observable in distraining, used on the occasion. To give a cover to his proceedings the prisoner Abdoor Rohim (No. 1,) had procured the attendance of a Muskooree peadah named Mohun Singh; but this man, (since deceased) declared before the magistrate that he had strongly protested against the violence and illegality of the whole proceedings, but to no purpose.

The whole of the occurrence above detailed were fully proved by the evidence of six witnesses, the neighbours of the prosecutor, who saw the attack made and the property carried off, and identified the whole of the prisoners whom they had all known before, being residents of the part of the country. One of the prisoners, Ashruff Ali Chowdhry, (No. 2,) is a brother of Golam Ali, who is mentioned above, had desired to purchase a share of the prosecutor's property; Abdoor Rohim the leader and principal party in the attack, is brother-in-law of Golam Ali. The generality of those concerned are distinctly stated to be dependants of Golam Ali, who, no doubt, was the instigator of the whole affair. He is a well known violent character, and has been more than once condemned to confinement in jail, for his share in outrages of various kinds. One of the prisoners, Amood Ali, *alias* Amoody (No. 3,) confesses that he had aided in the carrying off of the property of the prosecutor. This man is a most notorious bad character. Since the year 1828, he has received punishment many times for being concerned in various acts of violence, and is a well known *budmash;* Ashruff Ali, (prisoner No. 2,) also has undergone various terms of imprisonment at different periods. The prisoner Shoojat (No. 5,) was once before imprisoned.

The prisoners Ashruff Ali (No. 2,) Mahomed Alum (No. 4,) Shoojat (No. 5,) Shurufatoollah (No. 6,) and Shumbhoo Mali (No. 7,) pleaded *not guilty*, denying their having been on the spot at all. But of these only Ashruff Ali, (No. 2,) and Shurufatoollah (No. 6,) name any witnesses. The first of these had given in a list of no less than twenty persons, comprising amongst others, the names of several of the most respectable inhabitants of Comillah amlahs of the court, pleaders and others; of these however, he actually brought forward none save three, who were near relations or dependants of Golam Ali himself, and whose evidence in such a matter was utterly worthless. The witnesses named and brought forward by Shurufatoollah (prisoner No. 6,) are his own relations, and their evidence can as little be considered trustworthy. Before the magistrate three other persons, respectable inhabitants of Comillah, brought forward by Ashruff

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Case of ASHRUF ALI and others.

Ali, (prisoner No. 2,) to prove the fact of his having been at the sudder station on the day when the riotous attack occurred, denied all knowledge on the subject one way or the other.

It is apparent, for the following reasons, that the alleged suit under Regulation V. of 1812, was merely a pretence for plundering the prosecutor's property.

1stly. The attachment of the property was not made according to the provisions of the Regulation, because it is clearly proved by the evidence of the thannah peon that although he had urged the propriety of doing so, none of the neighbours were called for on the occasion, neither was the property listed nor its value estimated, the chests containing the property being taken out of the house and carried away unopened.

2ndly. As already stated, the property, instead of being placed in the custody or charge of some of the respectable persons in the prosecutor's neighbourhood, was carried to a distance of about eight miles.

3rdly. All the property proved to have been carried away by the prisoners was not entered in the list, now found in the *nuthee* of the Regulation V. suit, and even those few that *are* mentioned therein, were estimated much beneath their real value. For instance, three cows were estimated at fifteen annas (! !) and three chests, one of which is stated to be three cubits in length and two in breadth at Rs. 2-4. Their proper value could scarcely have been less than 10 Rs.

4thly. The prisoner, Abdoor Rohim (No. 1,) stated in his petition of the 15th Poos, presented to the collector, that on the 11th of the previous month (Aughun), the prosecutor forcibly carried away certain attached property, but in the list of property filed by him on the 12th of Aughun, no mention whatever is made of this circumstance.

5thly. The prisoner Abdoor Rohim (No. 1,) declares that he attached the property on the 9th of Aughun, but it does not appear that the list thereof was filed at the sale commissioner's office before the 12th of the month, and only then, no doubt, on information having reached him that the prosecutor had already laid his complaint at the police on the 10th.

Under all the circumstances of the case, the proof being so clear against the prisoners, the plea of the prisoner Abdoor-Rohim, with regard to the Act V. case, can only be regarded as so much further evidence against him.

The prisoners were sentenced by me to suffer imprisonment for the term of five years with hard labor in irons. The amount of the property plundered was also directed to be made good by the attachment and sale of the property of the prisoners, or of so much of the same as would cover the amount of loss sustained.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Bar-

low, Bart., and Mr. B. J. Colvin.) The Court have to notice specially, the absence of the comparative statement, required by Circular Order, No. 7, of 26th May, 1854.

1854. November 23. Case of Ashruf Ali and others.

We see no reason to interfere with the sessions judge's order. Though the plaintiff did not name two of the prisoners at first, he did in his first deposition and the witnesses have, from the commencement of the inquiry, inculpated them. The defence, of the two named at the subsequent examination, is *alibi*. The evidence of the witnesses to that point was properly not credited below.

We confirm the sessions judge's order

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges*.

SHEOPERSHAUD SONAR AND GOVERNMENT

versus

BEHAREE MISSER SEPOY.

Moorshedabad. 1854. November 23. Case of BEHAREE MISSER.

The prisoner's appeal was rejected on the proof against him.

CRIME CHARGED.—Wounding the prosecutor, Sheopershaud Sonar with intent to murder.

CRIME ESTABLISHED.—Wounding the prosecutor.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 1st September, 1854.

Remarks by the sessions judge.—The prisoner was proceeding to the collector's office, with a guard of other sepoys, on the 1st of August, 1854, about 11 A. M., and when passing the Gorabazar on the pretence of some sand having got into his shoes stopped, while the other sepoys went on, and then going into the shop of the prosecutor wounded him in his breast with his bayonet and gave him some blows with his hand on his person. The magistrate very properly committed him on the charge of wounding with intent to murder. There was strong suspicion of the *intent* from the use of so dangerous a weapon, coupled with the fact of a previous dispute, but it did not amount to legal presumption.

The prisoner is a Government sepoy of the 7th regiment N. I. He had previously a dispute with the prosecutor regarding some money which he gave him to be converted into ornaments, and brought an action against him in the magistrate's court, where his case was dismissed and he was referred to the civil court for a civil suit against the prosecutor.

1854.

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Case of BEHAREE MISSER.

The witnesses, who witnessed the thrust of the bayonet, were the prosecutor's witnesses in the criminal case before the magistrate. Their evidence would of course be taken with more caution than the evidence of disinterested witnesses.

The prisoner is a very powerful man and had he intended to take the prosecutor's life could easily have done it. He only once struck him with the bayonet, and then with his hands. I am inclined to believe that he intended to frighten or only slightly wound the prosecutor. It is impossible to ascertain clearly the intent, but as the witnesses who saw the deed and attribute an undue violence to the act, had previously given evidence in favor of the prosecutor against the prisoner, I think on such a point under such circumstances, the prisoner is entitled to the benefit of the doubt.

The officiating civil surgeon stated in his evidence that he thought the lungs had been penetrated, and was afraid at first that the wound was fatal. The prosecutor however entirely recovered.

The assessors, who sat with me on the trial, declared the prisoner guilty of wounding the prosecutor on full legal proof. I concurred in the finding and, with reference to the deadly weapon used, sentenced him as stated in the proper column.

Sentence passed by the lower court.—Imprisonment for the period of five years in banishment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) Having gone through the proceedings, we find the facts detailed by the sessions judge to be established by the evidence. The proof against the prisoner is conclusive of his guilt. We reject his appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

DEENOODASS BEARER ALIAS DEENOO FURASH.

24-Pergunnahs.

1854.

November 23.

Case of DEENOODASS BEARER *alias* DEENOO FURASH.

The sentence was reduced and sessions judge informed that he should have stated on what count he had convicted.

CRIME CHARGED.—1st count, perjury in having on the 12th July, 1854, deposed on solemn declaration under Act V. of 1840, before the magistrate of the 24-Pergunnahs, in the case of theft of fish from the *jheel* or tank situated on the premises of Mr. A. Dick, in which Suroop Janna and others were defendants that "I and Bunmally went to the *jheel* to bring water, I saw three men with three nets catching fish, two men were sitting on the bank, of these two men who were on the bank one was Suroop the defendant here present, Bunmally seized a man, I was behind and had a *kulsee*, for which reason I was unable to seize him, Suroop was a servant of the house, therefore I knew him. He was not casting a net, only sitting on the bank. The *jheel* being under his (Suroop's) charge, I consider that Suroop aforesaid having brought people from the outside was causing them to catch fish, on which account he (Suroop) was himself sitting there." And in having again on the above date deposed on solemn declaration before the magistrate aforesaid that "when Bunmally seized one of the men with nets, I did not go to the place of occurrence, therefore I cannot tell what the prisoner now present then said. I did not see the prisoner (Suroop Janna) sitting on the bank of the *jheel.* I heard it from Bunmally, I did not see Suroop there at that time." One of these depositions being false and both being contradictory of each other on a point material to the issue of the case; 2nd count, perjury in having on the 12th July, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of theft of fish from the *jheel* or tank situated on the premises of Mr. A. Dick, in which Suroop Janna and others were defendants, that "I did not see the defendant (Suroop) sitting on the bank of the tank." Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the 24-Pergunnahs, on the 28th July, 1854.

Remarks by the officiating additional sessions judge.—This is a deliberate and wanton act of perjury. The prisoner was sent

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Case of DEENOODASS BEARER *alias* DEENOO FURASH.

in by the police to prosecute a party for theft of fish from a piece of water, belonging to his employer, Mr. A. Dick, of the Civil Service. The circumstances under which he committed the perjury are detailed in the charge, and evince a lamentable disregard of the sacred obligations of an oath and the vital importance of truth. The proof against the prisoner is complete, and he made a full and unreserved admission of guilt before the magistrate. He pleads guilty before this court and supplicates its clemency, but I have no bowels of compassion for a crime which pollutes the stream of justice in our courts, desecrates our judgment-seats and stamps our tribunals of law with the brand of mockery.

Sentence passed by the lower court.—Seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The Court see no reason to interfere with the conviction in this case, the prisoner has confessed his guilt throughout, but there is nothing in the circumstances of it, which calls for the highest penalty which a sessions judge can inflict for perjury. The Court accordingly reduce the sentence to three years' imprisonment with labor and irons.

The officiating additional sessions judge should have entered in column ten, under the head "crime established," the particular count on which he convicted the prisoner. The first count involved contradictory statements, the second direct perjury in swearing that he did not see what he had seen. The Court convict him upon the first count.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

NUJJOOMOODIN AND GOVERNMENT

versus

ASHOOREE (No. 1, APPELLANT,) SULLIM (No. 2, APPELLANT,) SUFDUR (No. 3,) AND GOLAM HOYDUR (No. 4 APPELLANT.)

Backergunge.

1854.

November 24.

Case of ASHOOREE and others.

The defences set up by the prisoners being found to be false, their ap-

CRIME CHARGED.—1st count, burglary in which property to the value of Rs. 177-6-3, was carried off; 2nd count, knowingly and wilfully receiving and keeping stolen property.

CRIME ESTABLISHED.—Burglary.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 25th April, 1854.

1854.

November 24.

Case of Ashooree and others.

peal was rejected.

Attention of sessions judge drawn to section 6, Regulation IX. 1796.

Remarks by the sessions judge.—The house of the prosecutor was broken into during his absence on the night of 3rd February, and property to the amount of Rs. 177-6-3, carried off; coming home the next morning and ascertaining what had happened, the prosecutor accompanied by Abbas and a chowkeedar, Adoo, started off to give information to the police. Having to go out of their way in order to secure a boat, they were joined by Rumjanie chowkeedar, who also had had his weekly report to give to the thannah. While going by land to the house of the party, from whom a boat was expected, they heard the voices of men inside a patch of jungle. On Adoo chowkeedar calling out to them, they ceased talking, and as they would give no reply, he with his companions went inside the jungle Having so done, four men ran out, leaving two bundles of clothes. They were seen to run into the compound of Ashooree's house. The clothes being at once recognized by the prosecutor as part of his stolen property, he and the chowkeedar got the aid of the talookdars, and had Ashooree and the other three prisoners seized. At first they denied the theft, but on the talookdar's promising to say nothing about it, if they delivered up the property, all four produced various articles of silver ornaments as their admitted share of plunder; all of which has been identified as belonging to the prosecutor.

The prisoners were kept in the talookdar's premises that day and night, the next day, the 5th, the prosecutor started with the prisoner and his recovered property for the thannah, which, owing to stormy weather, they did not reach till the following day, the 6th February

The prisoners, Nos 1, 2 and 3, confessed at the thannah; prisoner, No 4, denied the charge as did all the prisoners before the magistrate.

Their defence at the sessions is that the charge is false, that the prosecutor and witnesses are in league to ruin them, and they name witnesses to prove that they are of good character.

It was a strange accident, which led to the discovery of the prisoners, but there is no doubt whatever of the truth of the story. The evidence against all the prisoners is presumptuously strong and holding them, in conjunction with the law officer, convicted of burglary, I passed sentence upon them as shown below.

Sentence passed by the lower court. --Each to be imprisoned for five years with labor and irons.

With reference to the above remarks, the Court: (Present Messrs. A. Dick and B. J. Colvin) recorded the following Resolution No. 786, dated 18th August, 1854.

The Court, having perused the proceedings above recorded, observe that the petitioner, Sullim, prisoner No. 2, in his petition of appeal, has stated that the prosecutor and he were at

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Case of Ashooree and others.

dire enmity, in consequence of prosecutor wishing to marry (*nikkah*) a woman who refused him and accepted petitioner, proof of which he *adds*, that since his imprisonment on this charge of prosecutor, prosecutor had by force carried off the woman, and he had complained to the magistrate, before whom the case was pending.

Ashooree and Golam Hoydur petitioners, prisoners Nos. 1 and 4, have likewise stated causes of enmity in their petitions of appeal, which are capable of verification on inquiry if true. It is to be regretted, that neither the magistrate nor the sessions judge asked the accused (except in the single instance of Sufdur) why they had been so falsely charged by the prosecutor, when they totally denied the charges, and also their confessions at the thannah, purporting to have been given in so much detail. The very singular circumstances, under which the prisoners were detected and apprehended, should have raised some doubts, and induced the utmost care in dealing with the case.

The petitions of appeal will be sent back to the sessions judge, who is requested to direct the magistrate to institute inquiry into the cause of malice alleged by the petitioners in them, and forward the result to this Court, with the least delay.

In reply to the above resolution, the following letter No. 19, dated 25th October, 1854, was submitted by the sessions judge.

I have the honor to submit, in pursuance of the orders of the Superior Court, conveyed in their resolution of the 18th August, 1854, No 786, the result of the inquiries made in regard to matters alleged in the petitions of appeal of Ashooree and others

From the officiating magistrate to sessions judge . 25(dated the 20th October, 1854

I have the honor to acknowledge the receipt of your lett No. 179, dated the 25th August, forwarding a copy of the r solution of the Presidency Court of Nizamut Adawlut in tl case noted in the margin,* to gether with the appeals in orig nal of the prisoners, and direc ing me to submit to you tl result of my inquiry into tl cause of malice, alleged by tl prisoners to exist between the and the prosecutor.

* Prosecutor Nujjoomooddee *versus* Sullim Khan, Ashooree, and Golam Hoydur. Case Burglary.

Immediately on the receipt of the above, I ordered the daroga of thannah Mirzagunj to make the necessary inquiries on th spot, and he reports that havin taken the depositions of the wi nesses noted in the margin,† who are respectively near neig bours of the prisoners and th prosecutor, he could find no proo

† Nowaboodeen. Mahomed Ukbur. Lal Gazi. Shazeer Mahomed. (Neighbours of Ashooree a l Sullim Khan, prisoners, reside s of Bullobhoore) ,

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Case of Asmoolah and others.

Sheikh Mudde.
Sheikh Poran.
Suddurooddee Dye.
Suddurooddee 2nd.
Sheikh Lushkur.
(Neighbours of prosecutor Nujjoomooddee, inhabitants of Jera Koolly.)
Sheikh Birum (brother of late Kalloo.)
Phelan, husband (*nikka*) of Komola,—Oomed Ullee, brother of Komola. *

whatsoever of the truth of the statements contained in the petitions of appeal, presented by the prisoners to the Presidency Court of Nizamut Adawlut

In consequence of the darogah, having omitted to examine the woman, by name Komola, widow of the deceased, Kalloo, and said to be by the prisoner, Sullim, his own (*nik-ka-hee*) wife, regarding whom a quarrel first arose between Sullim and the prosecutor, I ordered the darogah to send in for examination before me the woman Komola, together with all the other witnesses, who from relationship or propinquity would be likely to know the true facts of the case.

Although the prisoner, Sullim, has stated in his petitions of appeal that the prosecutor and he were at enmity, on account of his (Sullim) having succeeded in obtaining as his wife (*nik-ka-hee*) the woman, Komola, who had refused the prosecutor, it appears from the evidence of Komola herself and the other witnesses noted in the margin,* that no such alliance ever took place between the prisoner, Sullim and Komola.

* Komola.
Birmu.
Phellan.
Oomed Ullee.
Sheikh Mudde.
Sheikh Poran.
Suddurooddeen.
Suddurooddeen 2nd.
Sheikh Lushkur.
Lall Gazi.
Shozeer Mahomed.
Nowabooddeen.
Mahomed Ukbur.

Komola moreover denies all acquaintanceship with, or knowledge of, either the prosecutor or the prisoner, Sullim.

It is true that the prisoner, Sullim, presented me with a petition on the 19th of August, 1851, (when he was in jail) on this charge of the prosecutor, complaining that the prosecutor had by force carried off the woman, Komola, his *nik-ka-hee* wife, from his house. On receipt of his petition I ordered the darogah to inform the woman that if she had been carried off by force or otherwise ill-treated, that she should come to me and present a petition to that effect. The darogah reported that he had informed the woman of my order, and she not appearing, nothing more was done in the case When Komola was sent in by the darogah she deposed to having been married (*nik-ka-hee*) in the month of Poos last, to a man of the name of Phelan. From the depositions of Komola and the other witnesses that have been examined, there does not appear to be any truth in the statements set forth in the petition of appeal of the prisoner, Sullim.

The prisoner, Golam Hoydur, states in his petition of appeal

1854. November 24. Case of Ashooree and others.

that he is at enmity with the prosecutor, because in the month of Assin 1260, he (the prisoner) had brought a charge of theft against a man by name Jaheer, brother of the prosecutor.

From the office records, it appears that on the 26th of Bhadoon 1260, the prisoner, Golam Hoydur, brought a charge of theft against Jaheer and some others. The case was investigated by the jemadar of the thannah, Mirzagunj, who reported that it was a false charge got up on account of a dispute regarding the boundaries of a certain piece of land, between the prisoner, Golam Hoydur, and the parties he accused. Since the receipt of that report on the 21st September, 1853, no further orders have been passed in the case.

The witnesses noted in the margin,* who are near neighbours of Golam Hoydur, deposed before me that they did not know what relationship or connection existed between the accused, Jaheer, and the prosecutor, Nujjoomooddeen, therefore there does not appear to have been any cause of enmity existing between the prosecutor and the prisoner, Golam Hoydur, when the charge on which the latter has been convicted was instituted

* Sheikh Soorut. Sheikh Kalloo. Ujjul Khan.

The prisoner, Ashooree, states in his petition of appeal that in the month of Poos, 1260, he petitioned the darogah of Mirzagunj to be appointed as chowkeedar of Bullubpore, in the place of Ramzanee chowkeedar, who was the adopted son or *dhurmopootur* of the prosecutor, Nujjoomooddeen. The darogah denies having ever received such a petition from the prisoner, but on the 17th Poos, 1260, an inhabitant of Bullubpore by name, Kutubmoolla, petitioned against Ramzanee chowkeedar, complaining of the latter's carelessness and neglect of duty, and requesting another and better chowkeedar to be appointed in his place.

Moreover the witnesses noted in the margin,† deposed before the darogah to Ramzanee chowkeedar being no *dhurmopootur* or other connection of the prosecutor. No cause of malice therefore seems to have existed between the prisoner, Ashooree, and the prosecutor, Nujjoomooddeen.

† Nawabooddeen. Mahomed Ukbur. Lall Gazi. Shozeer Mahomed.

I have the honor to return the petitions that accompanied your letter under reply, and at the same time to forward, for your inspection, the papers connected with the inquiries made by me. The prisoners‡ have this day presented me with two petitions that I have also the honor to forward to you.

‡ Sullim Khan. Golam Hoydur.

I regret that so great delay has occurred in completing the

inquiries directed to be made. It has been owing to the distance of the thannah from the sudder station and the necessity of sending for the witnesses and examining them myself after the darogah's local inquiries.

1854. November 24. Case of Ausoonaa and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The defences set up by the petitioners, prisoners, having turned out false, after a careful inquiry by the magistrate, as directed by this Court, we see no reason for interference with their conviction and the sentences passed on them by the sessions judge.

The Court observe, for the future guidance of the sessions judge and of the magistrate, that one only of three witnesses named by the prisoner, Sullim, was examined at the trial in sessions, and the documents directed, by Section 6, Regulation IX. 1796, to be furnished by the magistrate, together with the proceedings to the sessions court, are not to be found on the record · nor is there any thing on record to shew that the omission was noticed by the sessions judge; or that he made any inquiry respecting the absence of the witnesses for the defence.

PRESENT:

J, H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

ARUZ MAHOMED (No. 6,) SHAMOOKA MANJEE (No. 7 APPELLANT,) AND BHENGOORAH NOSYA (No. 8.)

Rungpore. 1854. November 24. Case of SHAMOOKA MANJEE and others.

CRIME CHARGED.—1st count, highway robbery on the person of Hafez Noor Mahomed, and plundering cash and property, value Rs. 94; 2nd count, knowingly receiving and having in their possession property obtained by the said highway robbery.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer —Mr. A. W. Russell, magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 30th June, 1854.

Conviction and sentence passed by the sessions judge in a case of highway robbery, upheld in appeal.

Remarks by the officiating sessions judge.—Hafez Noor Mahomed, witness No. 1, an inhabitant of Delhi, a fukeer of a very mild disposition and little bodily strength, was on his return from Behar, passing through the bazar of the village of Sonakasee, when the villagers began to tease and pull him about, ending at last by taking from him two pieces of cloth, for which they paid him thirteen annas, and then, according to witness's statement, they put him in charge of Shamooka Manjee, prisoner No. 7, who happened to be passing, whom they called a chowkeedar and directed him to shew witness to the Dhurla ghat,

1854.
November 24.
Case of SHAMOOKA MANJEE and others.

which he did, and they were ferried across by prisoner No. 6, Aruz Mahomed, some others being in the boat. After crossing, the prisoners Nos. 6 and 7 and others, took witness's bundle from him in spite of his opposition, and opening it, helped themselves to 5 *Ashrufees* and 14 Rupees, and then drove him away. He complained at the thannah, the jemadar went out and apprehended Aruz Mahomed, the ferryman, prisoner No. 6, on witness pointing him out as one of the robbers; he confessed, produced 2 *Ashrufees* and 2 Rupees, named Bhengoorah, prisoner No. 8, and others; Bhengoorah, prisoner No. 8, was then apprehended, confessed also and produced one rupee, acknowledging he had received two, of which he had spent one, and naming several parties and describing another, name unknown, as being concerned. The jemadar found no proof against the others, and could not ascertain who the unknown person was, but on the darogah going out, he learned from the villagers of Sonakasee that Shamooka Manjee was the person who had accompanied the fukeer to the *ghat*, and on apprehending him, he confessed, produced two *Ashrufees*, and named Hoorah, prisoner No. 9, and others; No. 9 was afterwards apprehended at the station, nothing was proved against him, and he was acquitted; (statement No. 8) prisoners Nos. 6, 7 and 8 also confessed before the magistrate; Nos. 6 and 7 accusing each other, and No. 8 allowing that he was present when the robbery took place and was compelled to accept two rupees; and their confessions there and in the mofussil (which were much to the same effect) were duly attested on the trial and the production of the money by them was fully proved. The identification (by witnesses, Nos. 1 and 2,) of the money taken in connection with the confessions, and the fact that two of the *Ashrufees* were of a peculiar description, said to be coined at Joypore in Rajpootana, was also satisfactory. The whole three prisoners were recognized by witness No. 1, as having taken a part in robbing him, and witness No. 22 proved that witness No. 7, Shamooka Manjee, was the person whom they had pointed out to the fukeer, when he asked the road to the *ghat*, and that the fukeer had gone away with him. In their answers at the sessions trial, prisoner No. 6, Aruz Mahomed, acknowledged the robbery to have occurred, and that he had received the two *Ashrufees* and two rupees as his share. No. 7 denied all knowledge of the affair, alleging he was a *pagul* and had been bewitched, &c. No. 8 confessed, as he had done before, that he came to the *ghat*, when the others were robbing the fukeer, had remonstrated with them and had finally been compelled to accept two rupees. The prisoners, Nos. 6 and 8, called no witnesses, those summoned by prisoner, No. 7, did not support his defence. The law officer convicted the prisoners, Nos. 6, 7 and 8, of the first charge, No. 6 on full legal proof, the others on violent presump-

1854. November 24. Case of SHAMOOKA MANJEE, and others.

tion. I concurred and passed the sentences mentioned, giving a much shorter term to No. 8, than to the others, as I considered that, though present at and participating in the plunder, there were grounds for believing he arrived after it had begun and did not take an active share in it. The fact of nearly four-fifths of the plunder being found in the possession of prisoners, Nos. 6 and 7, showed who were the leaders.

Sentence passed by the lower court.—Nos. 6 and 7 to be imprisoned, with labor and irons, for five (5) years each, and No. 8 for one (1) year.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. H. Patton.) The prisoner (Shamooka Manjee) appeals against the sentence of the sessions court, but advances nothing in his petition of appeal calculated to impugn the propriety of that sentence. His admissions, both before the police and the magistrate, and the fact of his having produced two of the missing gold-mohurs from his house prove his complicity in the highway robbery beyond all question and doubt. The conviction and sentence are therefore upheld and the appeal rejected.

PRESENT:

A. DICK, ESQ., AND SIR R. BARLOW, BART., *Judges.*

BUXOO MULLICK AND GOVERNMENT

versus

MUDUN MONNAH.

Midnapore.

1854. November 24. Case of MUDUN MONNAH.

Prisoner convicted of the wilful murder of the burkundaz guarding him when working as a convict, sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of his guard, Peeroo Mullick burkundaz, the brother of the prosecutor, Buxoo Mullick, in order to effect his escape, he being at the time a convict under sentence.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 12th of January, 1854.

Remarks by the sessions judge.—This trial is supplementary to that held by my predecessor in the month of January, 1847. The particulars of the case are fully detailed in Mr. Raikes' report, No. 20, dated 3rd February, 1847, from which the following is an extract. "It appeared from the evidence in this case that the prisoners, who are four convicts of the Midnapore jail, were with another named Mudun Monnah given in charge of the deceased, who was a burkundaz of the jail, on the morning of the 19th of December last, and directed to plant trees in the Government school compound, which is about a stone's throw from the jail. On the return of the convicts to jail at the close of the day, these five men and the burkundaz were missing and

1854.

November 23.

Case of Mudhoo Mundle.

no tidings were heard of them till about eleven o'clock at night. At that time a report reached the thannah that a man with a Government badge near him was lying dead at a tank, about five miles from the town. Two police officers were despatched to the spot, and found the deceased, Peeroo Mullick, lying dead with his feet bound together, his hands tied behind his back, and some old pieces of cloth and '*newar*' knotted tightly round his neck, one of these was also passed round the root of a bamboo tree, under which he was lying. The fetters of four of the missing convicts were found in a pool or hole, near which the body was lying, and three bundles of bamboo twigs, a short *sickle* used by the convicts to cut these twigs, and a hollow bamboo with oil were also discovered in the immediate neghbourhood of the body, also the handle of a cutting instrument, the blade of which was afterwards found with the prisoners on their apprehension.

"The *post mortem* examination shewed that the man had died from strangulation, and, from the marks on the chest and abdomen, the medical man was of opinion he had struggled stoutly with his murderers. The old pieces of cloth and '*newar*' fastened round the neck, hands and feet of the deceased resembled the articles of this description which the convicts were accustomed to use

"It was proved in evidence, that the deceased, Peeroo Mullick, had for some time been in the daily habit of attending the four prisoners as their guard, and that on the day of the murder a burkundaz and a gang of convicts were observed to cross the river, and proceed in the direction of the village near which the body was found. That a little boy named Damoo Ghose (whose age would not permit of my examining him) while looking for his master's cows, on the evening of the 19th December, perceived some one lying under a tree, who returned no answer when spoken to. That the master of Damoo Ghose and others, on hearing the cow-boy's report, proceeded to the spot and found the deceased lying dead, bound hand and foot, and strangled by pieces of cloth knotted round his neck. That these pieces of cloth were proved to be the cloth worn by the prisoners, and some *newar* to be the garters used by the prisoner Mudhoo Mundle, to support his fetters, and prevent their galling his ancles. That within a few yards of the body, the bamboo twigs cut by the convicts, and piled in heaps ready for conveyance, were found, and the fetters of the four prisoners discovered in the pool close by. That the place, where this murder was committed, was a dense jungle of bamboo trees, divided from the village by thick *paun* gardens, and that robbery could not have been the object of the murderers, as a four anna piece and four pice were found upon the body. That the relatives of the deceased positively swear to three pieces of *capra*, which were in

1834.
November [illegible].
Case of Mudda Moree Ali.

the possession of the prisoners when taken, as the cupra constantly worn by the deceased; and which he had on the day he last left his home to attend at the jail, that one of these pieces had been torn in halves, which was not the case when Peeroo Mullick wore it.

"The futwa of the moulvee convicts the four prisoners of the murder of Peeroo Mullick, on violent presumption" and declares them liable to perpetual imprisonment or even to suffer death at the discretion of the judge.

"In this finding I concur, for it is not only evident that the deceased must have been murdered by one or more of the prisoners, but the circumstantial evidence is so clear on this point, that it implicates them all as participators in the murder. In the first place, I feel convinced that the deed was premeditated, and the opportunity sought for in this way. The convict prisoners are all men of infamous character, and on this account were set to work near the jail: there is moreover a standing order of the magistrates, that whenever convicts are sent to work at a distance a double guard be sent with them. These were two difficulties these men had to get over to accomplish their purpose (viz.) to get to a sufficient distance and without a double guard. What was the exact inducement they held out to Peeroo Mullick to permit them to go so far is not known, but his brother and relatives declare he had no money with him when he left home in the morning, yet five annas were found in his waistcoat pocket when dead. This would be the sum the five convicts were likely to pay for any extra liberty granted. Some inducement must have been held out: for the mere purpose of cutting bamboo twigs could not have taken him so far, or in that direction, while the object of the convicts is obvious enough, namely the loneliness of the place where the murder was committed, and its immediate vicinity to a dense jungle extending for many miles, and thus affording a safe and easy retreat to escape into. Secondly, the deceased being a strong powerful man and these prisoners of greatly inferior strength, it is impossible he could have been mastered by one or two of them, and the manner of his death plainly shews that the overpowering force of numbers was employed to secure and strangle him. After the conclusion of the trial, I visited the place where the body was found, it is apparently the site of an old tank now studded with clumps of bamboos and brambles; on two sides, is a very large *maidan* and on the other, jungle and pawn gardens, which completely screen it from a straggling village at the edge of the jungle. About two or three yards from the spot, where the body was discovered, is a small hole or *pool* of water about eight or ten yards in circumference and containing water about a foot deep. In this *pool* the fetters of the four prisoners were discovered. The badge of the burkundaz was lying at his feet, and from this circumstance, and the

1847.
November 24.
Case of Mudun Monnah.

shady quiet nook in which he was lying, I think he must have put aside his badge and arms, and laid down to rest perhaps fallen asleep, in which helpless state he was doubtless attacked by the prisoners. As his feet were bound together, and his hands tied behind his back, and then three bandages knotted round his neck, there must have been three or four men engaged in securing and killing him, and as no cry was heard by those living in the village, where I think it might have been heard if often repeated, I conclude every *combined* precaution was taken by the prisoners to prevent resistance, and cause death as speedily as possible. The bundles of bamboo twigs, the remains of radishes they had been eating, the '*chunga*' of oil, the rags used by them to keep up their fetters, and lastly the fetters themselves thrown into the pool of water, were all within a circle of ten or twelve yards from the body, and supposing the fetters to have been taken off and concealed after the perpetration of the murder, and the deceased's clothes then removed from his person, there can be no doubt that each of the prisoners must have known of the murder. Having therefore arrived at the conviction that the circumstantial evidence in this case clearly implicates the prisoners, as the murderers of the deceased, Peeroo Mullick, and believing that so atrocious an outrage could never have been committed in broad daylight, but by men who had previously determined on it, and could rely on the assistance of each other and the unanimity of purpose that secured it, I consider the four prisoners guilty of the crime charged against them."

The prisoner pleads *not guilty* and states in defence that he was deputed by the burkundaz to get some fire, that on his return he could find no one, became alarmed and ran away. The prisoner's admission, corroborated by direct evidence, proves that the deceased, Peeroo Mullick, proceeded in charge of five prisoners, including the accused, Mudun Monnah, to cut bamboos at Narugun on the 19th December, 1846, and there is strong presumptive evidence that Peeroo Mullick met his death at the hands of these five persons, all of whom, from the circumstances set forth in the record, must have aided and abetted in the act. The assessors, with whose assistance the case was tried, declare the prisoner guilty of the charge preferred against him. I concur in this finding and recommend, with reference to the Sudder Court's resolution of the 7th April, 1847, that prisoner be sentenced to imprisonment with labor and irons in transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick and Sir R. Barlow, Bart.)

Mr. A Dick.—I would sentence the prisoner as recommended. His answer, in defence, is evidently false. He must have seen what had occurred, as the murdered man was lying there, had he been absent as he states.

1854. November 24. Case of MUDUM MOWAR.

Sir R. Barlow.—The prisoner was one of the gang under the deceased burkundaz's charge working on the roads, he absconded with the others, they were apprehended and tried for the murder, and were sentenced by the Court in 1847. The prisoner has been at large from the day of the murder, and was only recently apprehended. His defence is unsupported and he cites no witnesses. I concur in the proposed sentence.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT

versus

JHUREE LOLL.

Tirhoot.

1854. November 24. Case of JHUREE LOLL.

The charge held to have been properly preferred by the collector, through the Government pleader, as the Government was the aggrieved party.

CRIME CHARGED.—1st count, forging a *mooktearnamah* dated 25th January, 1854, purporting to be signed by Kebree Thakoor, Oomrao Thakoor, Toolah Thakoor, and Kashee Thakoor, &c., (twenty-nine persons); 2nd count, knowingly filing in the collector's office the said forged *mooktearnamah* in order fraudulently to obtain a sum of money on account of *malikanah* of the *maliks* of mouzah Burrumpore.

CRIME ESTABLISHED.—Knowingly filing a forged *mooktearnamah* in the collector's office in order fraudulently to obtain a sum of money.

Committing Officer.—Mr. A. E. Russell, magistrate of Tirhoot.

Tried before The Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 7th September, 1854.

Remarks by the sessions judge —This commitment, though not a trial in continuation, is connected with the same case of withdrawal of *malikanah*, from the collectorate of this zillah by means of forged documents which was the subject of trial No. 2, of sessions for July last.

On the 25th of last January, the prisoner filed a *mooktearnamah* in the collectorate purporting to have been executed by Kebree Thakoor, Oomrao Thakoor and others, twenty-nine *maliks* of mouzah Burrumpore signed for all by Rughoobut Thakoor, one of that number, and attested by two persons named Bidesee Kapoor and Mungah Tutwah, with a petition to receive a sum of *malikanah* in deposit, which *mooktearnamah* was authenticated by one Hunooman Persaud, mohurrir of the collectorate, the witnesses to its execution being identified by the prisoner. On the petition an order was, on the same day, passed for reports from the *amanutnuvess* and *towjeenuvess*, as to the *malikanah*

1868. November 24. Case of Jhuree Loll. being or not being in deposit, and for comparison of the names ... nount of the shares of the petitioners with the malikanah register, and on the 1st February, the amanutnuvess reported that the money was not in deposit, the toujeenuvess on that day also reporting that the sum of Rs 1,799-13-2 malikanah having been in deposit had been paid, on the 2nd November preceding, to Pertaub Loll and Gunesh Suhai mooktears and was therefore not at credit. Upon this, with reference to the tenor of the above reports, the petition was the same day rejected and the case struck off. After its transpiring in the inquiry into the original case of drawing out the malikanah, that the mooktearnamah on the authority of which it had been paid, was forged, it was deemed necessary to inquire into this case also, and accordingly the prisoner having been examined on the 13th and 14th July, he admitted having written the mooktearnamah and stated that the petition had been written at the lodging of Nusub Dutt, the toujeenuvess of the collectorate, (under examination in another case,) at which time one Sonephool Raee, Nusub Dutt, and four of his (prisoner's) clients, maliks of Burrumpore, whose names he did not remember, the two witnesses to the mooktearnamah and himself were present; that the said Sonephool Raee signed for the witnesses, and that one of the four maliks (his clients) signed for himself and the rest. Afterwards the collector having summoned the alleged witnesses to the mooktearnamah, it turned out that one of them, Bidesee Kapoor had died in 1252, F. S., or eleven years before, to which effect his son Bheechook Kapoor, witnesses No. 1, gave evidence, and the other Mungah Tutwah, witness No. 2, distinctly denied either having witnessed any mooktearnamah, or that he had any acquaintance either with the prisoner or the other alleged witness Bidesee Kapoor.

Eventually the collector made over the case and parties to the magistrate, who having taken the evidence of the above two alleged witnesses to the mooktearnamah, and summoned the heirs of Rughoobut Thakoor, by whom that document purports to be signed, and three of the maliks of Burrumpore out of those who had given evidence in the former case, two of whom attended and gave evidence, committed the case for trial to this court.

The witnesses marginally* named deposed as they had done in the collectorate and foujdary, No. 1, that his father Bidesee Kapoor had died in 1252, F. S., and that the signature on the mooktearnamah was not his (witnesses) and No. 2, denied having witnessed the mooktearnamah, or that he knew the prisoner Jhuree Loll.

* No. 1, Bheechook Kapoor.
„ 2, Mungah Tutwah.

Two witnesses, maliks† of Burrumpore, on behalf of twenty-nine of whom the mooktearnamah

† No. 4, Loll Thakoor.
„ 5, Lutchmun Thakoor.

1850.

November [illegible].

Case of [illegible].

purported to have been executed, denied having ever executed such a power, and deposed that Raghoobut Thakoor having died in 1255, F. S., eighteen others had died long before that year, one having died since the date of the *mooktearnamah*.*

No. 6, Ughoree Pashan. One witness, the gorait of Burrumpore,* gave evidence in corroboration of the statement of the two preceding witnesses of nineteen of the *maliks* having been long dead.

The prisoner, pleading *not guilty*, defended himself by urging that Nusub Dutt, having sent Sonephool Raee, called him (prisoner) to his lodging, having previously told him that he wanted him to write a *mooktearnamah* for some relations of his (Nusub Dutt's) caste, and he (prisoner) having accordingly gone to that person's lodging, the latter told him (prisoner) to write a *mooktearnamah* in his own name which he (prisoner) refused, saying that if it was a *bonâ fide* business, he would do it, but if it was a crooked business he would not. Upon this Nusub Dutt told him (prisoner) to do it upon his word, which he (prisoner) accordingly did. Four persons were sitting by whom Nusub Dutt pointed out to him (prisoner) as his client, and he (prisoner) wrote the *mooktearnamah* with his own hand and one of those four persons signed it, two others having witnessed it, he (prisoner) writing the names in the *mooktearnamah* as told him by Nusub Dutt from a book which he held in his hand, and when the *mooktearnamah* was ready he (prisoner) took it with the two witnesses to the collectorate, where he got it attested and filed. He had no witnesses to call.

The law officer's *futwa*, convicting the prisoner on the 2nd count, pronounces him liable to discretionary punishment by *tazeer* and in approval of this verdict and as remarked in the abstract report of the abovementioned trial No. 2, of sessions for July last, to the effect that "several other similar cases have recently occurred by which money has been fraudulently drawn from this collectorate," I felt that justice required for example's sake that the prisoner should not be sentenced to a lesser punishment than that which I have awarded him, viz. imprisonment for five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We consider the crime established against the prisoner. He refrained from calling any witnesses in defence, which he naturally would have done had his defence been true. He has thus totally failed to show that he himself had been imposed upon, and the fact of the *mooktearnamah* uttered by him being a gross forgery is fully proved.

We observe that this case was sent to the magistrate by the collector, who directed the Government pleader to prefer the charge against the prisoner, which he was quite competent to do, as Government was the aggrieved party.

PRESENT:

H. T. RAIKES AND B. J. COLVIN, ESQS., *Judges*

Cuttack.

1854

November 25.

Case of RASS PUNDAH.

The prisoner was sentenced to death with reference to the law (Section 1, Regulation VIII of 1799,) by which it may be inflicted on accomplices in murder.

GOVERNMENT AND GREEDHAREE BYSACK *versus* RASS PUNDAH.

CRIME CHARGED.—1st count, wilful murder of Purrya, aged thirteen years, the son of Greedharee Bysack, prosecutor, for the sake of his ornaments; 2nd count, having stolen from the person of the said Purrya, gold and silver ornaments, to the value of rupees 20-13-7; 3rd count, having in his possession stolen property, knowing that it had been so obtained.

Committing Officer —Mr. R. P. Harrison, magistrate of Cuttack.

Tried before Mr M S Gilmore, sessions judge of Cuttack, on the 18th October, 1854.

Remarks by the sessions judge.—The particulars of this case are as follows .—

On Wednesday afternoon, the 20th September last, the murdered boy Purrya, who was not quite thirteen years of age, returned home with his younger brother from school, and after placing his books in his house went at sunset, according to custom, to get *toolsee* at the Bulram Jeo *thakoor barree* (which is close by the prosecutor's house) and play with other boys, and not having returned at night when the family were going to partake of their evening repast, his father Greedharee Bysack and the other members of the family searched for him, both at the *thakoor barree* and in the village, but unsuccessfully. And at about 9 o'clock, when certain persons had resorted to Greedharee Bysack's house on hearing his lamentations for the loss of his child, the prisoner Rass Pundah who resides at, and is the *poojarree* of the *thakoor*, joined them and proposed that they should light torches and search for the child along the bank of the Ullunka river, in the direction of which Nobin Bysack, (witness No. 16,) the brother of the prosecutor, stated he in the evening heard the cry of a child, supposed to be one or two years of age, calling out '*malo baplo*,' and the said Nobin Bysack, Dhurmoo Bysack, Unam Patter, Gobind Patter and Bunmally Sahoo, conducted, it would appear by the prisoner Rass Pundah, went and searched along the *bund* near the river and in a *dhan* field, about three *beegahs* distant from the *thakoor barree* and the plaintiff's house, the body of Purrya was descried by the prisoner saturated in blood with a severe *gash* across the side of the head near to the ear. The above persons then returned to the prosecutor's house, and his brother Nobin Bysack communicated

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to him the death of his child, and afterwards called the chowkeedar Bushtum Mullick (witness No. 3,) who placed a watch over the body and gave information in the morning at the Hurryhurpore thannah; and the darogah arrived about 10 A. M. and after examining and forwarding the body to the magistrate, arrested the prisoner Rass Pundah and four others, who were seen by Bushtum Mullick chowkeedar at the *thakoor barree* on the previous evening; and having put his hand on their breasts and discovered the prisoner to be in a state of considerable alarm, he suspected him, and after talking to him awhile, persuaded him to point out the ornaments belonging to Purrya, which he had buried in the ground under the eaves of *rushooee ghur* or cook house of the *thakoor*, and he then made a confession to the following effect, which he repeated with some little variation before the magistrate. That he did not himself kill Purrya, but on Wednesday morning at about two *ghurries* Bhuj Sahoo, came to him at the Bulram *thakoor mundir* and consulted with him to kill Purrya that evening and steal and divide his ornaments, and he agreed to do so; that in the evening as arranged, Bhuj Sahoo came to the *thakoor mundir* and inquired where Purrya was, and on his, the prisoner's, telling him he was playing outside the *mundir*, Bhuj Sahoo went for his sword which he brought wrapped up in his clothes and they then called Purrya to accompany them to the bank of the Ullunka river, to which they proceeded in the following order, viz., first Purrya, next Bhuj Sahoo, and last of all the prisoner. And after they had gone a short distance Bhuj Sahoo told him, the prisoner, to keep watch on the bund that no one was coming while he himself took the child in the direction of the river; and he accordingly did so, and on hearing Purrya call out three times *malo baplo* as he fell to the ground, he, the prisoner, ran to the spot and found Bhuj Sahoo had killed him and was dragging him by the hair of the head along the cow-path towards a field of *bealee dhan*, and on his following in their track, the blood on the deceased adhered to his feet; and he stood by the field while Bhuj Sahoo stripped the body of its ornaments which he gave to the prisoner, saying they would afterwards divide them; and he took them and buried them in the *thakoor barree*, whence he had produced them; and at the conclusion of his confession he admitted that the sword found in a compartment of the cook-house of the *thakoor*, was the instrument with which the deceased was killed.

Before the magistrate the prisoner stated that he himself fetched the sword from his house, (i. e. the *thakoor barree*,) and concealed it in his clothes, and gave it to Bhuj Sahoo unknown to Purrya, as they were proceeding in the direction of the river, and that he saw Bhuj Sahoo strike the deceased two blows, the first, while he was on the bund, across the right side of his head

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and the other, after he had ran up to the spot where they were, across the neck.

Before the court the prisoner pleaded *not guilty* to all the charges. But at the close of the trial when called on to state any thing he might wish to urge in his defence, he said that at two *ghurries* or about 8 P. M. on Wednesday, the day of the murder, Bhuj Sahoo asked him for the loan of his sword to take with him when he went to the river-side, and when he brought it back, it was wet. And he also entered into a confused account of his accompaying Nobin Bysack and the others in search of the deceased when he was reported to be missing, and of his subsequent apprehension by the police darogah, which on the whole tends to inculpate rather than exculpate him. He likewise stated that the witnesses for the prosecution had given false testimony against him, but cited no witnesses in his defence, and on his attention being called to that part of his statements before the darogah and the magistrate, which relate to his producing the deceased's ornaments, he denied that he had made such statements

Witnesses, Dam Sahoo, No. 1, Narian Sahoo, No. 2, and Purmee Sahoo, No. 8, deposed to the confession of the prisoner before the police darogah having been voluntarily made.

Witnesses, Lalla Rughoobar Ram, No. 9, and Muzohur Alli, No. 10, deposed to the same effect regarding his confession before the magistrate.

Dr. G. S. Scott, the officiating civil surgeon, deposed that on his *post mortem* examination of the body of Purrya, he found two severe incised wounds, one on the right side of the head, and the other on the left side of the neck, which he concluded had been inflicted by a sword or some similar weapon used with great force, and which were the cause of death.

The law officer convicts the prisoner Rass Pundah of the crimes charged, and declares him liable to punishment *accoobut:* and in the conviction of the prisoner I concur; and as he distinctly admitted in his confessions, which there is no reason to doubt were otherwise than voluntarily made, that he consulted in the morning with Bhuj Sahoo to kill Purrya, and that in the evening he called him and accompanied him and Bhuj Sahoo to the *bund* or embankment within a few paces of the spot where Bhuj Sahoo murdered him, and there kept watch, to give the alarm in the event of any person approaching, and afterwards followed the body to the field where it was stripped of its ornaments which he received and buried, and subsequently produced; and he moreover furnished the weapon with which the deceased was killed, and which was also found in his house, I consider the crime of being an accomplice in the wilful murder of Purrya to be clearly and fully proved against the prisoner Rass Pundah,

and seeing no extenuating circumstances in his favor, I would sentence him to undergo the last penalty of the law.

1854. November 25. Case of Rasa Pundah.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) The full and accurate account given by the sessions judge in his letter of reference renders further detail of the case unnecessary. The prisoner has been convicted as an accomplice in wilful murder, and the sessions judge proposes that a capital sentence should be passed upon him. This, under the circumstances of the case, we consider fully warranted. The prisoner admits that he consented to the murder of the child, that he provided the weapon for its perpetration, that he watched near the spot, while it was committed, to prevent interruption or surprise, and after its completion that he received and concealed the stolen ornaments, and the weapon in his house. Great doubts arise as to the truth of the prisoner's accusation that Bhuj Sahoo actually committed the crime; nothing whatever has transpired to implicate him in any way and he satisfied the police, (who appear to have acted promptly and honestly in the investigation,) that he was otherwise engaged at the time and could not have rendered any assistance in the murder; and the magistrate directed his release from bail, the inference follows that the prisoner himself alone did the deed; but as the law, by Section 4, Regulation VIII. of 1799, may equally take its course, whether the prisoner is regarded as principal or accomplice, when the complicity is so direct and criminatory, we sentence the prisoner to suffer death.

PRESENT:

H. T. RAIKES AND B. J. COLVIN, ESQS., *Judges.*

Mymensingh.

1854.

November 25.

GOVERNMENT AND LALL MAHOMED

versus

SHEIKH JAMAL.

Case of Sheikh Jamal.

CRIME CHARGED.—Wilful murder of Zumeer Fokeer.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 10th Oct. 1854.

The prisoner was convicted of murder, but not of so wilful and deliberate a nature as to incur the penalty of death.

Remarks by the sessions judge.—The circumstances of the case are briefly these. A dispute existed between the deceased and the prisoner, regarding the crops of a field, and on the night of occurrence, the deceased on passing by the prisoner's house, he called him in, when an altercation ensued between them, and each having used abusive language towards the other, the pri-

1854. November 25. Case of Sheikh Jamal.

soner became enraged and wounded the deceased on the left shoulder, back and below the neck with an axe (*korallee*) which terminated in the death of the deceased, seven days afterwards, and the prisoner was immediately secured by the village chowkeedar, but information was not given at the thannah, until the third day, as they entertained a hope of the deceased's recovery. The particulars of the case will be clearly shewn from the following abstract of the evidence.

The prosecutor, Lall Mahomed, deposed that on the 17th or 18th of Bhadro last, at about an hour after night fall, the prisoner, Jamal, struck the deceased, his nephew, with an axe on account of a dispute having existed between them, regarding the paddy of a field. The deceased was, at the time, on his way to visit his friend, one Elleem, and as he was passing by the prisoner's house he (the prisoner) called him inside and desired him to sit down, when in conversation, the prisoner asked the deceased what he had got from his *jujman*, the deceased replied that he had got some 5 or 6 Rs. and was going to Elleem to repay him a loan of 2 or 2½ Rs. The prisoner then immediately went into his house and suddenly came back with an axe, concealed under a cloth with which he had covered himself and began abusing him, saying that he could repay other loans but would not give him the price of two and half *kottahs* of paddy, which he owed him. The deceased replied that he had already paid him 5½ annas, the price of the paddy, when he lodged a complaint about it before the zemindar. The prisoner then interrupting him and abusing him for not paying the amount, struck the deceased a blow with an axe on his left shoulder, and as the deceased was attempting to escape, he gave him two more blows, one on the back, and the other above the loins. The deceased then fell down senseless, and his mother and uncle, hearing the noise, came to the spot and took him to his house; that he (the prosecutor) lives at a distance and heard the above circumstance from the deceased at noon on the day following; that there existed no other ill-feeling between them than the dispute regarding the paddy.

* Jurreep.

Witness, No. 8,* states that hearing a noise, he went to the spot and saw the axe in the prisoner's hand and that the deceased was lying on the ground senseless with three wounds, one on the left shoulder and two on the right side of the back, and heard from the deceased's mother that the prisoner had wounded the deceased.

† Shaheboollah.

Witness, No. 3,† states that on the night of the occurrence, at about half a *pahur* of the night, hearing a noise, he went to the prisoner's house, and on entering into the inner apartment, saw an axe in the prisoner's hand, which he snatched from him and

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afterwards saw Zumeer lying in the yard in a wounded state, and Zumeer told him that Jamal had struck him with an axe, and Jamal when asked also acknowledged before him that he had wounded Zumeer with an axe as he abused him.

Witness, No. 9,* says that he saw Zumeer running towards his compound, and was told by him that Jamal had wounded him, and he also states that he saw three wounds on his body.

* Jumun Fokeer.

Witnesses, Nos. 1, 11 and 2,† deposed that they saw Zumeer lying wounded in his yard and heard from him that Jamal had wounded him, and also stated that Jamal acknowledged before them that he wounded the deceased.

† Lakhoo, Sheikh Pagul, Sheikh Mojhoyoollah.

The other two witnesses, Nos. 5 and 12,‡ also supported what has been deposed to by the other witnesses.

‡ Kowcha. Belhitram.

The civil assistant surgeon, who examined the body, deposed on oath that the deceased's death was caused by inflammation of the right lung, the effect of an incised wound on the back, two inches in length, just below the neck, a little on the right side dividing a portion of the first rib and penetrating the chest.

The prisoner admitted, both before the police and the magistrate, having wounded the deceased with an axe on account of a dispute existing between him and the deceased, regarding the crops of a field In this court, he urged that Zumeer entered his house and abused him and consequently he struck him two blows on the back with the blunt side of an axe, he acknowledged his foujdary confession, but when his mofussil confession was read over to him, he stated that he did not say that he wounded Zumeer, but only that he struck him two blows with the blunt side of the axe, but he declined to examine any witnesses.

The jury, who sat with me on the trial, gave in a verdict of guilty against the prisoner and convicted him of the crime charged. I also agree in this verdict, I consider the murder clearly proved. There was not the slightest provocation, and from the fact of the prisoner using such a murderous weapon as a *kooraliee*, and having inflicted three wounds on the deceased with it, there is not the slightest reason for doubting that he intended to murder the deceased, and seeing no extenuating circumstances in his favor, I would recommend a sentence of death being passed upon him.

Remarks by the Nizamut Adawlut. —(Present: Messrs. H. T. Raikes and B. J. Colvin.) We do not find that what, if established, would have formed a very aggravating feature in this case, is proved by the evidence, viz., that the prisoner went into

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the house and came back with the axe concealed under his cloth. The deceased in his own deposition before the darogah does not state it. The prisoner, however, acknowledged before the magistrate that being greatly provoked by the abuse deceased gave him, he fetched the axe from a heap of grain and struck the deceased. There is no reason whatever to believe that when he called the deceased into his house he had any intention of injuring him; but their old dispute becoming the subject of discussion, the prisoner gave way to sudden passion, in the heat of which he seized the weapon and recklessly dealt the blows, which proved in the end mortal. Considering the act of the prisoner to amount to murder, although not of so wilful and deliberate nature as to call for a capital sentence, we sentence him to imprisonment in transportation for life.

PRESENT:

H. T. RAIKES AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

DOORGACHURN CHUCKERBUTTY.

Jessore.

1854.

November 25.

Case of DOORGACHURN CHUCKERBUTTY.

Prisoner convicted of murder in the heat of blood, was sentenced to imprisonment for life in transportation, agreeably to the precedents cited.

CRIME CHARGED.—Wilful murder of Seela Boistomi.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 8th November, 1854.

Remarks by the sessions judge of Jessore.—From the evidence of witnesses* and from the confessions of the prisoner before the police and before the magistrate (which have been duly attested), it appears that the deceased had lived with the accused for some years. Seela, on the morning of the 9th October, used foul language, because Doorgachurn did not go to Gouripore, as he had promised He became angry and struck her over the head with a *koorallee*, she fell. He threw the weapon down and fled. Witnesses Nos. 1 and 2, did not overhear the words used, but they witnessed the blow, and seeing prisoner run away, they ran to the spot and found Seela dead, with her head fractured.

Witness, No. 16,† also saw prisoner running away, witness, Nos. 17‡ and 18,§ also came up after the fact and saw the corpse and the blood-stained *koorallee* near it, and heard that prisoner had killed the deceased and ran away.

* No. 1, Lukhun Chung.
,, 2, Petumber Bewa.

† Setum Bewa.
‡ Rammohun.
§ Mooktaram.

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Case of DOORGA-CHURN CHUCKER-BUTTY.

Witness, No. 16, went off, and gave notice to Modoo Sircar, who sent witnesses, Nos. 3* and 4,† who found prisoner lying down in some thatching grass, with his teeth clenched and stupified.

* No. 3, Mohim.
† „ 4, Nukl.

Witness, No. 3, went off to the thannah, whilst witness No. 4, remained with the prisoner.

The mohurrir came that evening, and held an inquest in the presence of witnesses, Nos. 5 and 6,‡ who accompanied the corpse to the station.

‡ No. 5, Govind.
„ 6, Nilmony.

The next morning the prisoner confessed before the mohurrir.§

§ Witness No. 9, Kalachand.
„ „ 10, Nemai.
„ „ 11, Turufdi.

Owing to the absence of Dr. Palmer, the body was examined by the Native Doctor,‖ who describes the wound as "on the left temple and cheek, the bones of which were broken, the frontal bone, the brains, the left eye and the left side of the nose displaced," and declares that it must have been caused by some heavy weapon, and must have been the cause of death.

‖ Witness No. 8, Alibux.

In the mofussil confession,§ the prisoner said "he and Seela were seated in the verandah of his *mundub ghur*, when he, being irritated at what she said got up and *seized* the *koorallee* which *was in the verandah and* then *struck* her with it and threw it away. He saw her head was broken and ran away ten or fifteen *russees* and fell down from fright in some long grass, and witnesses, No. 4, and others came up and took him near his house, &c."

§ Witnesses, Nos. 9, 10, 11 & 3.

In the foujdary,¶ he professes that he "*had a koorallee in his hand and was going out of the verandah to cut wood*, Seela was eating betelnut, and used foul language. Being angry he *thrust* the *koorallee* (which was in his hand) at her head Seeing blood flow, he ran into the grass and fell down with his teeth clenched through fright, adding that he had eaten *gunja* during the night, but could not state if he was labouring under the effects of it at the time."

¶ Witness No. 12, Auckiloodor.
„ „ 13, Goopenath.
„ „ 14, Iradut.

Here he says "Seela threatened to kill herself and seized the *koorallee*. He tried to take it from her, and cannot tell whether the wound was inflicted by his hand or hers, seeing blood flow, he ran away through fright into the grass and was found by witnesses, Nos. 3 and 4." This lame defence is not creditable, considering the severe nature of the wound, and is at variance with the facts mentioned by the eye-witnesses as well as with the previous confessions.

1854. November 25. Case of DOORGACHURN CHUCKERBUTTY.

The jury give a verdict of guilty of wilful murder In this I coincide. As the offence* was committed in the heat of blood, at the time of altercation, I propose to sentence the prisoner to perpetual imprisonment.

* P 661, N. A. R. 30th October, 1852.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B J Colvin) We convict the prisoner of murder, and sentence him, under the circumstances which have been fully and clearly detailed by the sessions judge, agreeably to the precedent cited by that officer, and that of the case reported at page 661 of the Nizamut Reports, for May last, to imprisonment in transportation for life

PRESENT:

H. T. RAIKES AND B. J COLVIN, ESQS., *Judges.*

RAM COOMAR BHOOWALE AND GOVERNMENT

versus

TRIAL NO. 2.

SHEIKH SHAKER (No 1,) SHEEBNATH DOSS (No. 2,) SHEIKH BHAKOO (No. 3.)

TRIAL NO. 3.

SHEIKH KADER (No 13, APPELLANT), MAUGUN MUNDLE (No 14, APPELLANT), GOPEENAUTH ROY (No 15)

Dacca. 1854. November 25. Case of SHEIKH KADER and others.

The appeals of the prisoners were rejected as it was clearly proved that they were guilty. Sentence confirmed also on a non-appellant.

CRIME CHARGED.—*Trial No* 2, 1st count, Nos 1 to 3, riot wherein Bhuggeeruth Bhooeemallee was mortally wounded; 2d count, illegally opposing the police in the execution of their duty.

Trial No 3, 1st count, Nos 13 and 14, affray wherein Bhuggeeruth Bhooeemallee was wounded and died of the wound; 2d count, illegally opposing the police in the execution of their duty, No 15, being present, aiding and abetting in the above crimes.

CRIME ESTABLISHED.—*Trial No* 2, being accomplices in a riot, in which Bhuggeeruth Bhooeemallee was killed.

Trial No 3, Nos 13 and 14, affray wherein Bhuggeeruth Bhooeemallee was wounded and from the effects of which he died on the following day, No. 15, aiding and abetting in the above crime.

Committing Officer.—Moulvee Zynooddeen Hossein, deputy magistrate of Manikgunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 16th June and 19th September, 1854.

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Kader
[illegible]

Remarks by the sessions judge.—Trial No. 2. This charge was first tried on the 15th and 16th June last, since which the prisoners, now in court, have been apprehended.

The witnesses* proved the presence of the prisoners at the affray all armed, and that one Sheebnath (prisoner No. 2,) slightly wounded the deceased, none of the parties present seem to have been lea[illegible] in the riot.

* Nos. 1, 2, 3 and 4.

The prisoners pleaded *alibis*, which they were unable to prove.

The city cazee, who sat with me on the trial, convicted the prisoners of being accomplices in the crime charged, in which *futwa* I concurred and passed the same sentence as on the former occasion.

The party to which the prisoner belonged was deliberately assembled for an attack, I may refer to my letter* No. 399, of 16th June, 1854.

Trial No. 3. The principal witness, Kamal Mylish, No. 1, a tehsildar, stated that having heard of some *latteeals* collected by a neighbouring zemindar, he (the tehsildar) made an application to the darogah for the assistance of the police. This being refused, he proceeded to complain to the magistrate, when meeting the thannah jemadar, he went with him to Agla, a village within the limits of his employer's estate On the same day, an alarm having been given of the ryots' land being ploughed by the other party, the police and some ryots went to the spot, where the *latteeals* were assembled, when one of these, the prisoner, No. 15, called out "*mar*," and the ryots and police seem to have retreated. In doing so, the deceased, Bhuggeeruth, fell and was wounded with a *soolfee*, or spear, by the prisoner, Ram Churn No. 12, of which wound he (Bhuggeeruth) died the following day.

The facts, as regarded the disturbance, and the wounds received by the deceased, were fully proved by the witnesses, Nos. 2 to 6 and 27, and corroborated by Nos 7 and 8, before whom the wounded man's deposition had been taken by the police.

The civil surgeon ascribed the death of the deceased to inflammation arising from the wound inflicted on him

All the prisoners were recognised as having been present (with others not apprehended) at the time the disturbance took place, they all pleaded *not guilty* and attempted to prove *alibis*, but the witnesses for the prisoner, No. 13, denied all knowledge as to where this person was on the day of the occurrence; those for No. 14, said he was in his own house at noon, but this is quite compatible with his having been present at the disturbance at

* Vide Nizamut Reports for July 1854, pp. 35 and 36, remarks of sessions judge in case of Ram Churn Mundle and others.

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Case of SHEIKH KADER and others.

8 or 9 o'clock. The witnesses for the prisoner, No. 15, said he had been at his own village, a day's journey distant, but this, from his own two fellow-villagers, ought not to weigh, in my opinion, against the direct evidence for the prosecution.

The law officer convicted the prisoners, Nos. 13 and 14, on the 1st count, and No. 15 of aiding and abetting, I agree with the *futwa* in regard to these prisoners

Sentence passed by the lower court.—Trial No. 2, Nos. 1 to 3, each to be imprisoned for the period of five years with labor and in irons

Trial No. 3 -Nos. 13, 14 and 15, each to be imprisoned with labor and irons for the period of five years

Remarks by the Nizamut Adawlut (Present · Messrs H. T Raikes and B J Colvin) This case was before the Court on a previous occasion, having been sent up by the sessions judge of Dacca for enhancement of punishment on a prisoner named Ram Churn Roy, on whom a sentence of fourteen years' imprisonment was, on 7th July, 1854, passed The prisoners now appealing and others were sentenced by the sessions judge to imprisonment for five years with labor in irons. We find the evidence of the eye-witnesses regarding the presence and participation of the prisoners appealing, inclusive of Sheikh Kadur and Maugun Mundle, (see letter 623,) and of Sheebnath another, who has not appealed, to have been full and satisfactory and consistent throughout, and in our opinion completely establishes the guilt of the prisoners, including Sheebnath, as found by the sessions judge; and seeing no ground for interference, we reject this appeal, confirming the sentence passed by the lower court on all the prisoners.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

PERU PATNEE AND GOVERNMENT

versus

SHEIKH ANEES.

Sylhet.

1854.

November 28.

Case of SHEIKH ANEES.

Prisoner acquitted, the evidence against him being unsatisfactory.

CRIME CHARGED.—Forcibly committing sodomy on the person of the prosecutor.

CRIME ESTABLISHED.—Forcibly committing sodomy.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 3rd July, 1854.

Remarks by the sessions judge.—All parties concerned are convicts. The prosecutor states that during the hour in the middle of the day, allotted to the working prisoners for rest, he had gone to sleep under a tree, when the prisoner Anees suddenly seized upon him and forcibly committed sodomy on his person. That his cries brought up other convicts who saw the transaction, and that in consequence of his resistance, the prisoner bit him savagely in the arm. Two witnesses (prisoners) depose to seeing the parties in such a situation as to convince them that the crime was committed, while two depose to examining the person of the prosecutor and to having seen marks which led them to form the same conclusion.

Before the magistrate the prisoner stated that the prosecutor had spoilt some bricks he was making, and that a quarrel ensued and that hence he and the prosecutor were seen struggling together on the ground, while before this court he denies that they struggled together at all, and urged that the charge was a false and malicious one. He called no witnesses in support of either of his stories.

The assessors convict the prisoner of the crime charged and in this verdict I concur. The prisoner has been three times previously charged, since he has been in jail, with this crime, has been twice acquitted from the insufficiency of the evidence, and in one case the prosecutor was punished for a malicious charge. Such is his character, however, that it has been considered necessary for the last two years to shut him up at night in a cell by himself.

Sentence passed by the lower court.—Seven years and in lieu of stripes more two years, total nine years' imprisonment with labor in irons.

With reference to the above remarks the Court (Present:

1854. November 28. Case of Sheikh Anees.

Messrs. A. Dick and B. J. Colvin,) recorded the following resolution, No. 857, dated 8th September, 1854.

The Court, having perused the papers above recorded, connected with the case of Sheikh Anees convict, observe, from the report of the jail darogah, that he was informed of the crime perpetrated by the prisoner on the evening of the day, that is, on the 24th June, yet he did not report it to the magistrate till the 29th June, five days after. It does not appear that any notice of this culpable delay was taken either by the magistrate or the sessions judge. Again the fact of the examination of the person of the prosecutor by two of the prisoners in jail, witnesses Nos. 3 and 6, must have been known to the burkundaz who, the witnesses say, had charge of the informant, prosecutor, at the time; yet he has not been summoned to corroborate their depositions. As the whole of the evidence against the prisoner consisted only of testimony of prisoners, the burkundazes or chuprassees in charge of the prisoners, who could have spoken at all to the alleged occurrence of the crime, should have been carefully examined. The Court further observe that the sessions judge had stated the crime to have been perpetrated under a tree; whereas the evidence shows that it occurred in a hut used for keeping unburnt bricks and lime.

The Court therefore direct that the depositions of the jail darogah be taken to account for the delay, and of the burkundazes who were in charge of the jail prisoners when the occurrence took place. The accused will then be called upon for a new defence, and the assessors for another verdict. The sessions judge will likewise ascertain whether, as alleged by the accused in his defence, the eye-witnesses are brothers or relations of the person, who twice charged the accused with this very crime, and was punished for a false and malicious complaint.

The sessions judge will also account for the discrepancy between his statement and the depositions of the witnesses regarding the place of occurrence of the act charged.

In reply to the above resolution, the following letter No. 60, dated the 18th November, 1854, was submitted by the sessions judge.

I have the honor to inform you that in compliance with the resolution of the Court of Nizamut Adawlut, No. 857, dated the 8th September last, I have this day examined the jail darogah and one burkundaz in the case of Sheikh Anees.

The jail darogah deposes that on the date of the alleged crime, the prosecutor complained to him that Sheikh Anees had beaten him, but that early the next morning he asserted he had forcibly committed the crime charged against him, and that he believes that the delay which ensued in reporting the circumstance to the magistrate was occasioned by holidays.

Mooluk Singh burkundaz deposes that he was some distance

off from the prosecutor when he heard his cries, but that he learnt from the prosecutor that Anees had committed the crime charged. Both he and Gour Singh his fellow-burkundaz, have been suspended by the magistrate for their neglect in this case, and Gour Singh cannot now be found, so that I have been unable to take his deposition.

The prisoner Anees has nothing more to urge in his defence than what was advanced by him when the case first came on for trial.

The assessors convict the prisoner of the crime charged and in this verdict I concur.

I am unable to explain how it happened that I have in my report stated that the crime was perpetrated under a tree, for my note book records it to have taken place in a hut. I regret that the error should have occurred.

I directed the magistrate to ascertain if the eye-witnesses are relatives of the person who twice previously charged the accused with this crime, and he reports that they are quite unconnected.

The original papers are herewith submitted. This inquiry has been delayed in consequence of the illness of one of the assessors, and he was only able to attend court this morning for the first time, since the receipt of the Court's resolution.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The depositions of the jail darogah and of the burkundaz Mooluk Singh are extremely unsatisfactory. The negligence of the darogah is unaccountable, if the charge was subsequently made as he states; the prisoner at first complained to him merely of a beating. The conduct too of Mooluk Singh and of Gour, who, as he says, actually witnessed the crime, is so extraordinary that little confidence can be placed on the truth of his testimony.

The sessions judge has omitted to take the evidence of the burkundaz, who had charge of the prosecutor when his person was examined by two of the prisoners' witnesses, Nos. 3 and 4, as testified by them.

The Court, not satisfied with the evidence against the prisoner, acquit him of the charge, and annul the sentence passed on him.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

ALIMUDDIN

versus

ALOO ALIAS KALACHAND SURDAR (No. 2,) ABBAS ALIAS ASHRUFF (No. 3,) SOLIMUDDIN ALIAS SOLIM (No. 4,) PANJOO KHAN (No. 5,) RAMKANNYE GHOSE (No. 6,) BUKSHOO KHAN (No. 7,) MEHAR KHAN (No. 8,) KAZIMUDDIN DYE (No. 9,) EKAB-BUR ALIAS AKBUR KHAN (No. 10,) NAZIR MAHOMED (No. 11,) NAZIR MAHOMED DYE (No. 12,) NOWKURREE HOLDAR (No. 13,) NAZEEMUDDIN (No. 14,) MOOLYE DYE (No. 15,) BECHOO KHAN (No. 16,) SOLIM KHAN (No. 17,) GOPAL KHAN (No. 18,) SHEIKH ASHKUR (No. 19,) NUSSURUD-DIN (No. 20,) SHUMIZUDDIN (No. 21,) BECHOO KHAN (No. 22,) ALLADDEE (No. 23) AND AZIDOOL-LAH (No. 24.)

Tipperah.

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Case of KALOO *alias* KALACHAND SURDAR and others.

The prisoners were convicted and sentenced, although some part of the evidence against them was rejected as untrustworthy.

CRIME CHARGED.—1st count, dacoity at night, at the house of the prosecutor, and plundering therefrom property belonging to him, valued at rupees 119-4-6; 2nd count, receiving and retaining in their possession property valued at rupees 65-14-3, obtained by the above dacoity, knowing it to have been such; 3rd count, attacking the prosecutor's house at night, and plundering therefrom property belonging to him, valued at rupees 119-4-6; 4th count, receiving and retaining in their possession property valued at rupees 65-14-3, obtained by the above plundering, knowing it to have been such.

CRIME ESTABLISHED.—Attacking and plundering the prosecutor's house at night, and of receiving and retaining in their possession property valued at rupees 65-14-3, obtained by plunder, knowing it to have been such.

Committing Officer.—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 3rd June, 1854.

Remarks by the officiating sessions judge.—Here are four charges against the prisoners, viz., 1st, dacoity at night, at the house of the prosecutor, and plundering therefrom property belonging to him, valued at rupees 119-4-6. 2nd, receiving and retaining in their possession property valued at rupees 65-14-3, obtained by the above dacoity knowing it to have been such. 3rd, attacking the prosecutor's house at night, and plundering therefrom property belonging to him, valued at rupees 119-4-6. 4th, receiving and retaining in their possession property valued

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at rupees 65-14-3, obtained by the above plundering, knowing it to have been such.

It appears, from the statement of the prosecutor and the evidence of the witnesses, that about 5 o'clock of the 26th of January, corresponding with the 14th of Magh, the plaintiff's house was attacked by a body of men in number about thirty or thirty-five, all armed, variously, with spears, clubs, &c., when they entered the eastern house of the courtyard and proceeded to break open chests and boxes, taking from thence property with cash to the amount of rupees 119-4-6. Having effected this part of their object, they seized hold of the prosecutor and carried him off in a boat to the Mohunpore cutcherry of Kishen Mohun Mookerjeah, who holds a proprietary right in 3 annas 15 gundahs, in pergunnah Moohubutpore, and who had for a considerable period past cherished a deep enmity against the prosecutor. Of the whole body of men, the greater part went with the prosecutor in the boat, the rest proceeded in a southerly direction towards Mohunpore. At the time of the band leaving, a man of the name of Luraee Khelassee followed up the boat, running along the bank, giving the alarm and crying for assistance as he went on. The prisoners landed at the village of Mohunpore, where putting the prosecutor ashore they took him into the zemindar's cutcherry where they kept him for about an hour and a quarter, when they again put him on board the boat and proceeded towards mouzah Tarpasseh. The man Luraee Khelassee, who had, in following them up, reached *Chur Behaudurpore*, there gave the alarm, when several inhabitants of the village, to the number of 150 or 200 men, including the village chowkeedars Shitab, witness No. 42, and Sittoo witness No. 43, some of these men hastily entering boats, and others running along by land, succeeded in effectually cutting off the prisoners' retreat by the time they had reached *Chur Behaudurpore*, where they completely surrounded them. In despair of getting further on, the prisoners in the boat, to the number of 23, jumped on shore and hid themselves in the *nul* jungle which grows on the *chur*. The chowkeedar and the village people, who had turned out so readily, searched the jungle in all directions and succeeded in capturing the men, one after another, in their places of concealment. The villagers and chowkeedars then took the whole body of prisoners as well as the prosecutor and part of his plundered property and proceeded to mouza Nowabazaar. The darogah of Daoodkandee, when he received the intelligence of the occurrence, repaired immediately to Nowabazaar, where he received over from the captors two boats and the whole body of the prisoners taken on the *chur*, as also the arms, (spears, clubs, &c.) which were also found on board the boat in which the plunderers had embarked. The darogah then proceeded on the same day to take a deposition from the prose-

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cutor, and a statement of the property plundered from his house. Three of the band, viz., Kaloo *alias* Kalachand, (prisoner No. 2,) Abbas *alias* Ashruff (prisoner No. 3,) and Solimuddin *alias* Solim (prisoner No. 4,) confessed fully their participation in the deed of violence. Kalachand (prisoner No. 2,) also produced a small bundle from his person in which was found the gold and silver ornaments plundered from the prosecutor. These three men also confessed their guilt before the magistrate. The owner of the boat which the prisoners had used, Kannye Manjhee, (witness No. 44,) and Shibram Chung (witness No. 45,) and Muthoora Mohun Chung (witness No. 46,) boatmen, deposed distinctly and clearly to the fact that Bungshee Raee *naib* of the zemindar, Kishen Nauth Mookerjea, and Ishan Baroree had hired the boat for the declared purpose of proceeding first to Mohunpore and thence to Dacca. From the place where the boat was hired, 14 or 15 men proceeded in it to Mohunpore. When they started they are stated to have had no arms with them, but on reaching Mohunpore, where the zemindar's cutcherry is, five or six of the men got out and brought from the cutcherry house a number of *lattees* and spears, &c., which they deposited on board the boat. On the manjhee inquiring for what purpose they had brought these arms, they told him not to trouble himself about them, but to mind his own business. Ishan Baroree and Bungshee then came to him and told him not to trouble himself, but to take the boat on at once to a spot called Barehonbya in Mohunpore, and to *luguo* the boat under the large tree on the bank. These two men then got on shore themselves and with the other men proceeded by land, leaving two men of their party in charge of the boat. They returned about sun-rise to the boat, bringing the prosecutor and a quantity of property with them. They then told them to loose the boat. Ishan and Bungshee, the zemindar's gomashta and naib, went at once to the cutcherry, after which the boat proceeded to Mohunpore *ghat*. After this they proceeded with the prosecutor and his property to *chur* Behaudurpore, where they were captured by the villagers in the manner related above. The property which was taken in the boat and the ornaments found on the persons were all clearly proved, by the evidence of various witnesses, to belong to the prosecutor. Seven men, inhabitants of the prosecutor's village, also identified the prisoners as those engaged in the attack and plunder, and also swore to the property being the prosecutor's.

The prisoners generally admitted before the magistrate to having carried off the prosecutor, who, they stated, was in arrear of rent to Kishen Nath Mookerjea, zemindar. The prisoners plead not guilty at the sessions, and bring forward some witnesses in their favor, but these men, without exception being dependants of Kishen Nath, zemindar, who no doubt had insti-

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gated the whole matter, their evidence could not in itself be considered of any value, far less to weigh against the overwhelming testimony against the prisoners.

Every part requiring to be proved in this case has been fully and clearly substantiated. I understand this man Kishen Nath Mookerjea is a well known disturber of the peace of the country, where he resides; and it is deeply to be lamented that such a man should escape the punishment he deserves, I consider that it would be a great blessing to the whole country were a stringent law enacted to make zemindars or their local agents, or both, severely punishable on the occurrence of outrages in their estates by armed bodies of men; more particularly when, as in this case, there can exist no doubt whatever of their being the instigators. In a case of this kind, the guilt of the instigator or his agents is fifty-fold greater than that of the poor, ignorant instruments whom they employ. The employer enjoys complete impunity, and can safely laugh at the laws which he violates, as he takes very good care never to appear personally in the affair. The third count of the charge, viz., riotous assault and plunder is clearly proved by the clearest and fullest evidence. The prisoners were sentenced respectively to three years' imprisonment and one hundred rupees fine; the fine to be paid in the space of fifteen days, or in default of payment, the prisoners to labor on the roads, or until the payment of the same.

It is deeply to be regretted that the two principals, the naib and gomashta, have succeeded in absconding. Warrants are out for their apprehension, and I trust that their capture may be speedily effected.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. Dick.—The eye-witnesses, lookers-on, to the attack on the house of prosecutor and to the plundering, are not worthy of the least credit, as pointed out by the pleader, Mudoosoodun Dutt, for prisoners. They assert that they saw the attack (most of them) from a ruin; and yet each says no one was near him: and they recognized all the twenty-three prisoners and others; yet of these, the major part, they did not know before and could not name them; and were so far off, that though the dacoits, or plunderers, had placed a guard, none of these lookers-on were molested. I reject therefore the evidence of these men. There is however sufficient evidence of the prosecutor, the house servants and others to prove that the prosecutor was forcibly carried off, and was being taken to the master of the offenders, in a boat, when they were stopped and captured by the villagers on the river-side, on a hue and cry being raised. The statements of the prisoners in their defence, go far to corroborate the above view of the case.

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I see no reason therefore to interfere with the sentence passed on the prisoners.

The sessions judge, in his abstract of the case, has recorded that the employer of the prisoners, Kishen Nath, is a well known disturber of the peace. This should have been substantiated by a reference to some proved misdeeds of his. Again, the prisoners accused his (Kishen Nath's) co-sharers equally of malpractices, and referred to charges proved against them; yet with regard to the truth or otherwise of these counter statements, the sessions judge has not taken any notice.

Mr. Colvin.—I concur with Mr. Dick in rejecting the appeal, as there is sufficient good and trustworthy evidence to sustain the conviction of the prisoners, which evidence is corroborated also by the tenor of their answers and by the confessions of three of them before the magistrate.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT,

versus

MEAJAN.

Mymensingh.

1854.

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Case of MEAJAN.

Perjury must be charged while the case, in which it is alleged, is pending.

CRIME CHARGED.—Perjury in having on the 26th May, 1854, intentionally and deliberately deposed under a solemn declaration made instead of an oath, before the assistant magistrate of Mymensingh, in the case of Sofoo, that they saw Khoodeeah and others coming to Sofoo's house, arrest and beat him, and take away his cow, and again on the 9th June, 1854, intentionally and deliberately deposed under a solemn declaration made instead of an oath before the same officer that Khoodeeah did not beat Sofoo and that he was at the time of occurrence at Dhooladear Chur, such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 19th September, 1854.

Remarks by the sessions judge.—The prisoner, who was named as a witness by Sofoo in a case before the assistant magistrate, deposed that he saw Khoodeeah and others beat one Sofoo, but when he was again cited as a witness for the defence, he stated that Khoodeeah did not beat Sofoo, that at the time of occurrence Khoodeeah was absent at Dhooladear Chur. The assistant

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Case of MEAJAN.

magistrate, having discovered the discrepancy in his evidence, called for the prisoner, when he urged that Sofoo forced him to smoke *ganjah* at the time of his giving evidence and that he does not recollect what he said. In this court he urged the same plea and named witnesses to his defence, but their evidence was insufficient to prove his defence. The jury convicted him of perjury, in which I concurred.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of (3) three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court notice that although the assistant magistrate has attested the depositions, at the end of them, he has not signed his name to the certificate above the words, "assistant magistrate," at the beginning. This should not have been omitted, and the omission should have been noticed by the sessions judge.

The Court find that the case, in which the alleged perjury took place, was *decided before* the discovery of the crime. They hold therefore that the assistant magistrate was not competent to inquire into it. Perjury must be material to the issue of a case pending, otherwise no issue is left for disposal. When once final orders have been passed in a case between the parties to it, the proceedings cannot be referred to, to inquire into a charge of perjury said to have been committed, while it was pending. The Court accordingly acquit the prisoner and direct his release.

Additional note by Mr. Dick.—I would observe in confirmation of the correctness of the above view, that the crime of perjury is defined in Clause 1, Section 4, Regulation II. of 1807, with the *present* participle 'giving;' and again in Section 26, Regulation XII. of 1817. In Section 13, Regulation XVII. of 1817, however, when the punishment for it is declared, the *past* participle is used, 'having given,' because the trial for it is then before a court of circuit or the Nizamut Adawlut, and the commitment made.

PRESENT:

A. DICK, H. T. RAIKES AND B. J. COLVIN, ESQS., *Judges*.

DHUNEE GOWALAH AND GOVERNMENT *versus* KISNAH KAHAR.

Hazareebagh.

1854.

November 28.

Case of KISHNAH KAHAR.

The prisoner was sentenced capitally for murdering the deceased on the ground of witchcraft.

CRIME CHARGED.—Wilful murder of Musst. Jhulleah Gowalin wife of the prosecutor.

Committing Officer.—Moonshee Dubeeroodeen Ahamed, deputy magistrate of Burhee.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 15th September, 1854.

Remarks by the deputy commissioner.—The prosecutor states that on returning from his field one evening, he heard lamentations in the house of the prisoner, Kisnah, and going there, learned that the prisoner's son, who had been sick, was dead. The prisoner then went towards the prosecutor's house, followed by the prosecutor and Ruttee and Khemun; prisoner went into the house and dragged out the prosecutor's wife, on whom he inflicted several wounds with an axe, nearly cutting off her head, so that she died instantly. The prisoner then resisted all attempts to take him into custody, but help coming, he was taken up during the night. He killed the deceased as a witch, but the whole village knows she was not a witch. She was about thirty-five years old. The prisoner did not mention her while in his house, but after the fact he said that she was a witch and had eaten his child. She had never been so accused before.

The prisoner pleads *not guilty*.

No. 1, witness, Khemun Gorait, states that he and Ruttee and the prosecutor went to the prisoner's house and found him weeping. Prisoner then took an axe and ran towards the prosecutor's house, and before the witness and others could interfere, he killed the deceased in their presence. He said, she was a witch and had eaten his son. When leaving his own house, the prisoner said he was going to kill the witch.

No. 2, witness, Ruttee Chowkeedar, went to the prisoner's house and together with prosecutor and Khemun advised him to bury the body of his son. Prisoner then began to examine his gun and powder, and finally taking an axe, ran towards the prosecutor's house where he killed the deceased. Witness saw the blows inflicted by the prisoner. The deceased died instantly, prisoner said she was a witch. Before leaving his own house, he said he was going to kill the witch, but he did not name any one.

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No. 3, witness, Chootur Koomhar, saw the prisoner kill the deceased.

No. 4, Muzar Emam, No. 5, Deonath Singh, the witnesses to the apprehension of the prisoner, prove that he made voluntary confession of having murdered the deceased.

No. 6, Bhodah Gowalah, No. 7, Bonowdee Telee, No. 8, Tolo Modee, No. 9, Kirpa Gowalah.—The record of the inquest is duly proved by the witnesses thereto.

Before the police officer and before the deputy magistrate the prisoner made full and free confession of having murdered the deceased, because he believed that she was a witch, and had destroyed his son. These confessions are proved by the witnesses named in the margin.*

* No. 10, Toolsee Telee, No. 11, Chundun Modee, No 12, Rajahram mooktear, No. 13, Rewathlall mooktear.

The substance of the first confession is as follows :—

Yesterday afternoon my son died. When dying he said to me, "I am sick, my whole body is in pain, and just now Dhunnee's wife has laid hold of me, and having looked at me is gone. I refused to give her some mangoes, and therefore she is eating me." I comforted him and said, I would not allow her to injure him, but after a little, he became insensible and died. While I wept, Khemun and Ruttee and Dhunnee and Kisnah came and spoke kindly to me. I said to Dhunnee, Your wife has destroyed my son, he has told me so. I will kill her; so I took my axe and went out saying to Dhunnee, I will kill your wife. He made no reply. I went to his house and called his wife; she came, I said, Why have you bewitched my son? she gave no answer to my repeated question. So I cut her down with the axe, and when she fell I struck her two blows on the neck and one on the hand, I then returned to my house. She never spoke, I came home and said to the watchmen I have done murder, take me up. They said, You have an axe in your hands, how shall we take you up? I swore that I would hurt no one more, whom I have killed, I have killed. They then said to me, You are not a man who will run away, so we let you go free. Khemun Gorait tried to prevent me, he laid hold of me and said, Don't commit murder; but I would not heed him, I said My son is dead, why should I live? I too will cross on his shoulders. He and Jhullea (deceased) and I will all go together. Therefore I killed her with the axe. The prosecutor only said, whose murder? whose neck? This is true every word.

No. 14, Kisnah Dhobee. This witness speaks to the same facts as Nos. 1 to 3, but he adds the important circumstance that before going to the prosecutor's house, the prisoner said that the prosecutor's wife was a witch.

The prisoner in his defence says that the prosecutor's wife had formerly bewitched one child, and now had bewitched ano-

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ther, that he told the prosecutor he would kill her, on which prosecutor said, "whose murder, his neck, do as you like," whereupon prisoner took up an axe, and now he has no further memory of what happened.

For the defence.

No. 15, Janoo Burahil. Witness was passing the prisoner's house, when prisoner said to him, "Here, take back your gun, I have committed murder." He said no more and seemed to be much agitated. Witness afterwards heard that the prosecutor's wife had been murdered by the prisoner, and witness endeavoured to take up the prisoner who had an axe in his hand and would not surrender, but said that he would not run away.

No. 16, Chundoo Gorait, gives the prisoner a good character.

The jury, whose names are entered below,* find the prisoner guilty as charged.

In this verdict I concur. That the prisoner under a strong impression that the deceased had bewitched his child murdered her therefore, does not admit of doubt. The evidence leaves on my mind this further impression that the witnesses to the fact might have prevented the murder, if they would, and that they were wilfully, not apathetically, passive in the matter. I see no reason to question the statement that the dying child charged the deceased with having bewitched him, and the impression made by such a dying declaration on the mind of his ignorant parent, must have been extreme. Thus far, there is a kind of justification, which yet cannot be admitted, and it is plainly my duty to recommend that sentence of death be passed on the prisoner. But if there be room for mercy, let it be shown in this case. I am strongly of opinion that executions have to the people of this country no terror, physical or moral, and that the highest of secondary punishments, life imprisonment in transportation, has more exemplary force, than any other that can be proposed. That murder should carry with it the penalty of death is right, but it by no means follows that this penalty should be always enforced. Whatever punishment most deters from crime, that is the most eligible.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.)

Mr. A. Dick.—The prisoner in this case has, without doubt, incurred the penalty of capital punishment, but not in every case in which it is incurred, is its infliction expedient. In awarding that sentence, the judge should consider whether it be the one felt by the culprit as the most terrible. 2ndly, whether it be the one most effectual as a warning to others. 3rdly, whether the

* Lalla Deochund Lall, mooktear.
Lalla Hira Lall, mooktear.

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future safety of the community calls for its infliction. It is the last penalty of the law, and commonly held to be the severest, the most terrible, and most deterring. It should therefore be reserved for the most heinous of crimes, murder *premeditated* and *malicious*. It can be little dreaded by one who holds life in no estimation; and have little effect as an example among those who take it for a petty sum, or destroy it on the most trifling provocation. Life, moreover, is of small value to those who have little means of enjoyment, and suffer many deprivations, and much distress. To such, and those who love indolence and detest labour, perpetual imprisonment, continuous labor, and transportation to an unknown land, must be infinitely more miserable and frightful and more effectual in deterring. Consequently, when the culprit is one of those, who holds life at a cheap rate, and to whom individually it is almost valueless, and labor is irksome, and whose ignorance renders lasting removal to an unknown land, frightfully terrible, transportation for life must be more dreaded as a penalty, and effective as a warning, than capital punishment. In such cases then, where the crime of murder is unattended with premeditation or aggravated by malice, I am clearly of opinion, that the most appropriate and just sentence is transportation for life. The prisoner before us, on the instant of his child's death, in the presence of the husband of the deceased woman and of others, snatched up the weapon, and ran to the woman's house, a few paces off, and cut her down in full belief that she had killed his child by witchery, and he is described to have been a mild, inoffensive, good character by his neighbours, and bears a character free from cruelty and blood-thirstiness. I would sentence the prisoner as recommended by the deputy commissioner.

Mr. B. J. Colvin.—The facts being proved, I cannot concur in remitting the capital sentence in this case. If the reasoning of the deputy commissioner be assented to, there should be no capital punishment in the tract of country to which he refers, but neither does the law applicable to it, nor the practice* of this Court do away with the penalty of death therein. The prisoner, in my opinion, did premeditatedly and maliciously kill the deceased. The premeditation was of short duration, but it sufficed to let him form his design and take the necessary steps to effect his purpose, and he went deliberately from his own house to that of the deceased, armed with a deadly weapon, and gratified his malicious feelings, ill-founded as they were, by taking away her life. The delusion of mind under which he labored cannot be allowed to operate in favor of the prisoner. In all the ordinary affairs of life, he was apparently of a sound intellect, and had

* See the case of Government versus Choorooteah and others, decided 31st December, 1853.

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November 28.

Case of KISNAH KAHAR.

quite sense to know that he was committing an act, which would be visited with punishment.

Mr. H. T. Raikes.—The evidence on record proves that the prisoner was excited by distress of mind at the death of his son, which he attributed to witchcraft practised on him by the deceased Jhulleah, and announced his determination to take vengeance on the woman for the loss of his child. In the presence of those who had come to his house, he first seized his gun and examined his powder, but rejecting that weapon, he took up his axe and proceeded straight to the house of the prosecutor, dragged out the deceased and taxing her fiercely with having bewitched his son, to which he got no answer, he cut her down with his axe, and killed her on the spot This to my mind was wilful and deliberate murder, and as long as the law prescribes the penalty of death for the offence, this Court is bound to inflict it, when no circumstances of mitigation present themselves. In the present case I see none, and therefore concur with Mr. Colvin in sentencing the prisoner to suffer death.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges*.

ZURIFF KOLOO AND GOVERNMENT

versus

SYRUT SHEIKH (No. 9,) SULLIM SIRDAR (No. 10,) ANUND SHEIKH (No. 11.)

Rajshahye.

1854.

November 29.

Case of SYRUT SHEIKH and others.

The prisoner was convicted of aggravated culpable homicide, his intention to take the deceased's life being doubtful.

CRIME CHARGED.—Wilful murder of Suroop Koloo, brother of the prosecutor, Zuriff Koloo.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 24th October, 1854.

Remarks by the sessions judge.—The *futwa* convicting one of the prisoners of murder, and another (No. 10) of aiding and abetting in the same, and as I dissent from the conviction of the second prisoner, the reference is unavoidable.

The prosecutor, with the Government, (who was the deceased's brother) deposed to being called to go and see his brother, who had been killed, and found him lying with a wound on the groin on the left side, and on asking the deceased who had maltreated him, he answered the prisoners, Nos. 9 and 10, and two others not put on their trial. They then took him up, and carried him home on a *jhamp*, and when a *dundo* had elapsed, he died. The deceased did not mention where he had been wounded, or why.

He had an intrigue with Bugo Bewah, whose dwelling was one *beegah* and a quarter from the place where they took him (deceased) up.

1854. November 29. Case of Syrut Sheikh and others.

The prisoners pleaded *not guilty*.

Witness No. 1, Bugo Bewah, deposed that the deceased knocked at her door at night, and she was about opening it for him, when No. 9 with a bamboo *surkee*, wounded the deceased, who throwing up his hand ran away, No. 9 also went away, and on hearing deceased say he was killed she wanted to go to him, but was prevented by her rival's mother. That she had an intrigue with the deceased for five years previous, never had one with No. 11; when No. 9 struck the deceased he was alone. No. 10 was her uncle, and he never told her to break off her connection with the deceased; No. 9 had threatened the deceased, as he had flirted or joked with his wife, and the wound inflicted (by him) was not on her account (the witness and the wife of No. 9, are sisters.)

Witness No. 2 deposed that he was called by witness, No. 3, and went and found a man lying on the ground, who asked for some water. This was the deceased, who said he had been to the house of Bukaoollah, where the prisoners, Nos. 9 and 10, wounded him with a *surkee*, and that they were to tell his brother, which they did. This witness saw standing, one *null* from the place where the deceased was lying, two men, one of whom he recognized as No. 10.

Witness No. 3 confirms the above, and adds, he recognized two persons standing near, and one of them *resembled* No. 10.

Witness No. 14 deposed, that No. 9 came one night and said he had wounded the deceased with a *surkee*. (This witness is the prisoner's brother-in-law, and seems to have detained him till he was made over to the *darogah*.)

Witness No. 15.—The wife of the last witness confirmed her husband's statement, and also deposed that the wife of No. 9, was in the house of her father on the night that Suroop Koloo was killed.

Witness No. 8, *Mr. W. J. Ellis, sub-assistant surgeon.* From this evidence, in my opinion, it is fully proved that No. 9, and he *only* wounded the deceased, and the cause of his death was hæmorrhage, or loss of blood from a wound on the left thigh, taking in its course one of the principal branches of the femoral artery. There was another slight wound between the 2nd and 3rd fingers of the right hand, but this was not the cause of his death.

In addition to this evidence, there are two confessions made by No. 9. In both he distinctly admits wounding the deceased with a *surkee*, and that No. 10 instigated him to it. In the foujdary confession he says No. 10 told him to strike the deceased in the belly, but that he struck him in the thigh instead.

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November 29.

Case of SYRUT SHEIKH and others.

Three witnesses to the mofussil confession, and two to the foujdary one, were examined, and deposed they were voluntary; but I do not credit the entire statements made, the first confession was made with a view to throw the blame on another individual, who I do not think was at all likely to meddle in the matter, as his brother, the father of Bugo, and of the wife of No. 9, was alive. At any rate, the confessions can be only used against the prisoner, No. 9, who made them.

I would, therefore, on the evidence and the confessions made by No. 9, and taking into consideration the very suspicious circumstances under which the deceased was found, near the house occupied by the prisoner's sister and also his wife, and which (had he been apprehended instead of killed) would have subjected him to punishment for lurking at night with a malicious intent, (an offence, the Court have recently allowed the joint-magistrate of Pubna to include among the list of miscellaneous offences in part 1, of his monthly statements No. 2,) convict No. 9 of aggravated culpable homicide, and sentence him to fourteen years' imprisonment with labor and irons, as there is no evidence as to his intention to kill the deceased.

I dissent from the *futwa*, as regards No. 10. The law officer evidently convicts him on the confession made by No. 9. The only witness, who recognized him, merely saw him standing near the place where the deceased had fallen wounded, but this fact would not, or could not, make him an accomplice, or accessary to the murder. I therefore beg leave to suggest that the *futwa*, as regards No. 10, be superseded, and the prisoner acquitted.

No. 11, agreeably to the *futwa*, has been released, he was recognized by no one, and was not named by the deceased. No. 9, in his confessions, said he *wanted* to intrigue with his sister-in-law, but when questioned on the subject, she quite spurned the idea; and his looks were certainly not those of a gay *Lothario*, or such as would win a woman's heart.

With this opinion, I beg to leave the case in the hands of the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We concur with the sessions judge in acquitting Sullim, No. 10, as the evidence is not conclusive against him, and giving the prisoner, No. 9, the benefit of the doubt, as to there having been any intention on his part to take the deceased's life, we convict and sentence him as proposed by the sessions judge.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges*.

GOVERNMENT

versus

MOJOOMDEE.

Mymensingh.

1854.

November 29.

Case of MOJOOMDEE.

The Nizamut Adawlut on account of mitigating circumstances, reduced the sentence.

CRIME CHARGED.—Wilful murder of Obhoya Ourut.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 9th October, 1854.

Remarks by the sessions judge.—It would appear from the evidence taken on the trial that the prisoner, on the day of occurrence, returned from his fields at about one and half *puhur* of the day, and asked his wife, the deceased, if she had cooked the rice, when the deceased replied that she could not do so, as she was sick. The prisoner then became enraged and gave her a blow with his hand, when she fell down on the ground and died about one and half *puhur* afterwards. Witnesses,* Nos. 1 and 2, servants of the prisoner, who also returned from the fields with him, deposed that they were smoking tobacco at the distance of about three or four cubits from a house belonging to the inner apartment, and heard from thence the prisoner asking his wife, the deceased, if she had prepared the rice for him, and on her answering that she was unable to do so, as she was sick, the prisoner gave her a blow and went out to graze his cattle; that they, the witnesses, heard the sound of the blow, but did not see it given, as it was done inside the house; that the deceased then fell on the ground and when the prisoner's sister came home with water, which she went to fetch, the deceased asked her to give her some and drank it, when she began to vomit and fell senseless on the ground and died half a *puhur* afterwards; that the deceased was sick with fever for about six months and was in an emaciated state and that the prisoner was called by his nephew Bagooah, to see her, as she was vomiting, and the prisoner came home and had recourse to every measure to bring her to her senses, but all in vain.

* Shonaullah.
Heeda.

The other witnesses, Nos. 3, 12, 14 and 15,† also stated that they heard from the prisoner that he gave his wife a blow, which caused her death as she was sick.

† Sheikh Naboo.
Sheikh Bukerdee.
Sheikh Lushker.
Sheikh Shajah.

The civil assistant surgeon deposed that the deceased's death was caused by a rupture of the spleen, and

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that the rupture must have been caused by a blow of the hand or feet in that region of the body and the blow might have been slight, as there was no bruise outside.

The prisoner admitted both before the police and the magistrate having given his wife a blow. In this court, he urged that he gave only a slight blow and that the deceased died from illness, but he declined to examine any witnesses on this point.

The jury, who aided me on the trial, gave in a verdict of culpable homicide against the prisoner, in which I concurred. As the practice of beating wives in this district for the most trivial offence is of frequent occurrence, and death often ensues in consequence, it is necessary to punish severely. Although the immediate cause of death in this case was doubtless from the rupture of the spleen, produced by a blow inflicted by the prisoner, still as death ensued, I think the punishment awarded is not too severe.

Sentence passed by the lower court.—Four years' imprisonment and to pay a fine of 30 rupees on or before the 9th November, 1854, and in default of payment to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The facts are proved, but we think the sentence passed by the sessions judge to be too severe. The prisoner says he gave his wife a slap on the face only, and it is likely that this is true, as the sound of it was heard outside the apartment, which would not have been the case had the blow been dealt in the region of the spleen, where the body is covered; the rupture of the spleen probably followed from a fall in consequence of the blow, and its occurring so easily is quite accounted for by the spleen's diseased state. The prisoner too is described as not a harsh man. With reference to the above circumstances the sentence is reduced to one year's imprisonment with a fine of 15 rupees payable in fifteen days.

PRESENT.

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

RADHA ROY.

Sarun.

1854.

November 29.

Case of RADHA ROY.

The prisoner was convicted of perjury in denying that he had made a previous deposition on oath.

CRIME CHARGED.—Perjury, in having on the 15th July, 1854, corresponding with 5th Sawun, 1261 F. S., intentionally and deliberately deposed, under the solemn declaration of Act V. of 1840, taken instead of an oath, before the assistant with the powers of a joint-magistrate of Sewan, that Enayat Ally struck with a spear Pershad Ahir in the direction of his ribs and wounded him, so that he fell; and afterwards in having, on the 18th August, 1854, corresponding with 10th Bhadon, 1261 F. S., before the said court again intentionally and deliberately deposed under the solemn declaration of Act V. of 1840, that he had never made the above deposition, such statements being false, and contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan with full powers of a magistrate.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 20th September, 1854.

Remarks by the officiating sessions judge.—This prisoner, No. 2, was plaintiff in the case trial. No. 2, for September described as follows.

"The deceased, Sheopershad Ahir, with Radha Roy, plaintiff, employed by Shewpertabnarayn, were guarding the orchard of jack trees for their master at mouzah Nowadah, when the defendants, on the part of Enayat Ally ticcadar, attended by a large party of men, and it is said Enayat Ally himself came for the purpose of gathering and carrying off the fruit by force. The deceased was struck, it is said, by Enayat Ally on the side with a spear and on the belly by defendant, No. 3, with a *lattee* and from the injuries received, he expired on the 3d day following the assault, which took place on the 3d July last. The most serious injury was, it appears from the evidence of the civil surgeon, that inflicted by Sohawun, defendant No. 3, and there can be no doubt that that occasioned death. Defendants, Nos. 4, 5, 6 and 7, are also proved to have been engaged in the outrage, Bhugut and Gowree taking a more active part than Shewsum Singh and Rose Khan. The defendants all plead an *alibi*, but do not in my opinion establish it. In concurrence with the opinion

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of the jury, I find all the prisoners guilty of the crime charged against them, viz., riot attended with culpable homicide of Sheopershad Ahir, and sentence them as noted above. The joint-magistrate did not consider the proof sufficient to warrant the committal of Enayat Ally."

On the 15th July last, when examined under Act V. of 1840, he declared distinctly that Enayat Ally had struck Sheopershad Ahir with his spear, and again on the 18th August denied having made any such statement when similarly examined. From the proceedings in the case, it appears to me clear that the prisoner, when plaintiff, was bought off, and that he has deliberately and fraudulently committed perjury with the view of defeating the end of justice. He states in defence that he is a poor man and has committed a fault, and such is the opinion of the jury as well as my own. The crime of perjury being established, I sentence him as noted below.

Sentence passed by the lower court.—To be imprisoned without irons with labor for (3) three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The deposition of the 18th August, is not a contradiction of that of the 15th July, but a denial of having made it. The prisoner should not therefore have been charged with making contradictory statements on the two dates, but with perjury in swearing that he did not make the statement, which he did on the 15th July.

This charge being embraced in the words he had never made the above deposition, such statement being false, we convict him of perjury in denying on the 18th August that he had given the evidence which he did on the 15th July; appeal rejected and sentence affirmed.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

NIRGHIN TEWARRY.

Tirhoot.

1854.

November 30.

Case of NIRGHIN TEWARRY.

Appeal rejected, the charge being proved against the prisoner.

CRIME CHARGED.—Being an accomplice in the theft of 2 maunds, 32½ *seers* of opium, valued at 393 rupees 12 annas.

CRIME ESTABLISHED.—Being an accomplice in the theft of 2 maunds, 32½ *seers* of opium, valued at 393 rupees 12 annas.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before Hon'ble R. Forbes, sessions judge of Tirhoot, on the 11th August, 1854.

Remarks by the sessions judge.—In this case Mhunggoo Singh, zilladar, witness No. 6, was proceeding from Mooteeharee to Poochurya ghaut on the river Gunduck *en route* to Patna, in charge of 133 jars of opium carried by coolies and having arrived at night at a place called Ghoosiar, halted there till the morning. The witnesses and coolies kept watch till midnight, when however they fell asleep from fatigue, and about 2 o'clock in the morning, one of the coolies having got up, observed that two of the jars of opium were missing, which he concluded had been stolen. The zilladar early next morning gave notice at the thannah, and the darogah was endeavoring to trace the opium and thief or thieves, when two persons of the Ahur caste told him that the prisoner had confessed to them that himself and four others had together stolen the opium, and on his being accordingly taken up, he voluntarily confessed at the thannah before subscribing and attesting witnesses (Nos. 1 and 2,) that he and four others having gone to mouzah Ghoosiar, he (prisoner) staid at a distance while the other four went and stole and brought away two jars of opium, which being divided among them all, he (prisoner) received for his share 20 rupees worth, which he sold to one Dhujjo Rai.

In the foujdary court the prisoner made a similar confession, also attested by subscribing witnesses (Nos. 4 and 5); but in this court, pleading *not guilty*, he urged in his defence, that his confession had been extorted by the thannadar, but as he only called witnesses to speak to his previous good character, and it was on record that the prisoner had before been in prison for theft and other offences, I agreed with the law officer, who in his *futwa (tazeer)* convicts the prisoner of the crime charged, and the sentence mentioned below was passed by me.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of (5) five years.

1854 — November 30. — Case of NIRGHIN TEWARRY.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We find that the facts detailed by the sessions judge are established by the record. We accordingly reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND MUSST. POTEE CHOONARNEE

versus

RAJO TANTEE.

24-Pergunnahs.

1854. November 30. Case of RAJOO TANTEE.

The prisoner's appeal was rejected.

CRIME CHARGED.—1st count, dacoity attended with beating in the house of the prosecutrix and plundering therefrom property valued at Rs. 23-6-3; 2nd count, having in his possession property, a silver chain of value 1 rupee, acquired by the said dacoity, and knowing it to have been so obtained.

CRIME ESTABLISHED.—Dacoity with beating.

Committing Officer.—Baboo Grish Chunder Ghose, deputy magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 20th June, 1854.

Remarks by the officiating additional sessions judge.—This is a very clear case of dacoity. Some ten persons entered the premises, menaced and slightly assaulted the women of the house and breaking open a box carried off its contents. The prisoner was among those recognised at the time of the dacoity. He was standing still with a *mussal* in his hand at the time of his recognition. When arrested by the police, he at once admitted his complicity in the dacoity and produced from his person a silver waist chain, which he acknowledged to be a part of the plundered property. He repeated his confession before the magistrate. He denies the charge before this court, pleading an *alibi* and claiming the silver chain as his own property. He made no attempt to prove the former plea, but cited one witness to substantiate the second, whose testimony is manifestly a tutored tale. It is very clear that this is the prisoner's first offence, and hence the levity of the sentence.

Sentence passed by the lower court.—To be imprisoned with labor and irons in banishment for (10) ten years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner was recognized and named on the spot, and confessed before the police and the magistrate; he also produced from his person a silver chain, which he said was given to him, and which was part of the plundered property. We see no reason therefore to interfere with the sentence or the prisoner's appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., Judges.

NITTAE GHOSE AND GOVERNMENT

versus

ISHUR GHOSE (No. 12,) AND FURHATULLA CHOWKEEDAR (No. 13.)

Rajshahye.

1854.

November 30.

Case of ISHUR GHOSE and another.

One prisoner was sentenced capitally for murder, of accessaryship to which the other prisoner was acquitted.

CRIME CHARGED.—No. 12, wilful murder of Beelukhunna Aurut the wife of Nittae Ghose prosecutor, attended with the theft of her ornaments. No. 13, 1st count, being an accessary to the abovementioned murder before and after the fact; 2nd count, privity to the above murder.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 27th October, 1854.

Remarks by the sessions judge.—The *futwa* finding the charges against the prisoners proved, the reference is unavoidable as the sentence rests with the Superior Court.

The case is an aggravated one, and the proof of complicity is supplied by the confessions of the prisoners, which though denied in this court have been fully proved to have been voluntary.

The prosecutor, with the Government, was the husband of the woman murdered, and deposed that on the night of the 3rd August, he heard the prisoner No. 13, making a noise near his house and on asking him what he was doing, he replied his wife was behind the house, he then went away, and his wife went to the cooking-shed. After this, requiring a cloth, he asked his wife to give it him, but receiving no answer, he went to the cooking-shed but found she had gone. No. 13 told him to look for her at the *noiagollah*, but after an ineffectual search he returned home, when he found two men sitting at his house, who said they had discovered a body in the river at the place called Kolegaun. He then went to the place with his mother, and found the body of his wife, but the turtles had eaten all the face and upper part of the corpse, and there were no ornaments on her person, but he fully recognised it as his wife's and went and complained at the zemindar's cutcherry, when No. 12 confessed he had killed his wife, and No. 13 that he had inveigled her out of his (witness') house. The witness also identified some ornaments on the table, and a small copper spoon or scoop (used to take *sindoor* out of box) as his wife's property; and added, they had been produced by No. 12, from some long grass, all were in a small bag.

The prisoners pleaded *not guilty*.

1854. November 30. Case of ISHUR GHOSE and another.

Witness No. 1, the prosecutor's mother, deposed to the sudden disappearance of her daughter-in-law on the night of the occurrence, and to the discovery of her body afterwards in the river, which she assisted to take out, and recognised as that of her son's wife. * She also identified the ornaments and other things found in the *pawn* bag produced by No. 12, who had before made improper advances to the deceased, when she told him to desist. This witness gave her evidence in a very flurried manner, and I cannot help thinking she was aware of the intrigue going on between her daughter-in-law and the prisoner.

Witnesses Nos. 18 *and* 19 deposed to seeing No. 13 behind the prosecutor's house peeping in; and No. 12 at the house of Bawool Paramanik which was close by.

Witnesses Nos. 21 *and* 22. - These witnesses were at the house of Gungaram Ghose when the prisoner, late at night, came in and laid down in the *verandah.*

Witnesses Nos. 15 *and* 16, deposed to finding the body of the deceased, in the river; turtles had eaten off the flesh from the face and upper part of the corpse. The prosecutor when he went, recognised it as that of his wife.

Witnesses Nos. 9, 10 *and* 13 deposed to being present, when No. 12 produced some ornaments and other things contained in a bag, from some grass behind his cow-shed; and the two last witnesses identified them as the deceased's.

Witness No. 14 also identified the things produced behind the old *gowail,* as the property of the deceased.

Witness No. 17 saw the deceased speaking to No. 13.

Witness No. 20 saw her talking and joking with No. 12, on the day she was missed.

Witnesses Nos. 2, 3, 4 *and* 5 attest the *sooruthal,* all recognised the body as that of the prosecutor's wife. But the flesh from the face and upper part of the corpse had been eaten by turtles.

The above is a brief *epitome* of the evidence. All hearsay and irrelevant matter being omitted, the *hiatus* is supplied by the confessions.

The first read was that of No. 13, in the mofussil made before the darogah. In this he admitted acting as a go-between for the deceased and prisoner No. 12, and told the latter, that she had gone from her house to meet him.

The foujdary confession is much to the same purport, but what relates to his communicating to No. 12, that the deceased had left her own house to join him, was elicited by cross-examination.

The prisoner denied both confessions; but they are fully proved, by three very respectable witnesses* to have been made without any threat or encouragement being held out to him; and being

* Witnesses Nos. 7, 8 and 9.

a chowkeedar he must have been fully aware that the confessions would be used against him. 1854.

The confessions confirm the evidence given by the witnesses numbered Nos. 1, 18, 19, 21 and 22, in almost every particular, and there can be no doubt both were genuine confessions, made with a view to exculpate himself from the more grave charge of murder.

November 30.

Case of Ishur Ghose and another.

No. 12, in the mofussil, confessed to the abduction of the prosecutor's wife on the night of the occurrence. That after going some way they sat on a stranded boat and conversed. The deceased then refused to go any further with him, the reasons given by the prisoner for her refusal, are, first, that if he accompanied her to her father's house they (the inmates) would not receive her; *second*, if she became a *boistumee*, and went with him, he would desert her directly his wife was old enough to cohabit with him, and *lastly*, if she returned home, her husband would cut of her hair and nose. "He was to go by himself, as for her, it was better she would die." That not being able to persuade her to go on, and on her saying he might strike or kill (*mar*) her he got angry, seized her by the hand, and dragging her to the river, forced her into the water, in a place where the depth was up to the knees, and with his left hand held her hair, and with the right, on the back of her neck kept her head under water till she died (or drowned). He then lifted up her body, and finding she had ceased to breathe, he left the corpse in the water, and went home; taking with him her ornaments and the things she had given him. These he concealed behind his old cow-shed, in some grass, and then laid down and slept in the *verandah*.

The prisoner denied making this confession, but it was fully proved that he had done so, by the witnesses numbered in the margin,* and who before attested the confession of No. 13, both having been made at the same time, but that by No. 12, was first taken down.

* Witnesses Nos 7, 8 and 9.

The foujdary confession is much to the same effect, but less in detail, and the following questions was put to the prisoner by the joint-magistrate.

Q. Did you hold her down in the water with the intention of killing her?

A. No, I did not want to kill her outright, I held her down merely by way of chastisement.

এবরত দেওার মতলবে জলে ঠাসিয়া রাখিয়াছিলাম।

The witnesses examined to the confession of No. 13, also attested this, as voluntarily made by the prisoner before the joint-magistrate, and though I do not approve of confessions obtained by questioning, and doubt if the above question was a

1854. judicious one, the answer could never have been invented by the mohurrir, who took it down in the joint-magistrate's presence.

November 30. When called upon for his defence, No. 12 admitted he had an intrigue with the deceased, adding it was on this account the prosecutor accused him with the murder, and had him apprehended, and that he (the prosecutor) and Mokeem burkundaz made him produce the property from a place, *they pointed out to him*, and this his witnesses would prove.

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Witness Nos. 23, 24 *and* 25.—These witnesses were examined to the point and knew nothing; or were they aware of any previous enmity existing between the prosecutor and prisoner.

No. 13, when called upon for his defence, merely denied all knowledge of the murder, or of the woman being inveigled away from her home. He declined examining any witnesses.

On the usual question being put to the law officer, if wilful murder is proved against No. 12, he replied it was not according to the *shurra*.

He then gave in his *futwa* which convicts No. 12 of wilful murder, but declares *kissas* barred, as the prisoner denied the confessions. *Acoobut* was however incurred, both by him and No. 13, who was guilty of privity to the murder.

In my opinion, independent of the confessions, it is fully brought home to the prisoners, that they were seen near, or loitering about the prosecutor's house, the night his wife was missing, and that No. 13, being the chowkeedar of the village and on his watch, *must* have been aware that the deceased left the village in company with No. 12, his telling the prosecutor after, to search for her at the *naia gollahs* (or new *gollahs*) affords strong presumption that he knew she was to be taken there by No. 12, to the house of some prostitute; and the presumption is much stronger, that the unfortunate girl, on discovering what was to be done with her, refused to go any further with the prisoner No. 12, and who, because she refused, threw her down in the water, and held her head down till she ceased to move or breathe. In fact committed a cool and deliberate murder on an unfortunate girl that he had seduced from her home, because she would not, to please him, become as abandoned as the females he was in the habit of associating with. The only thing in his favor is the answer to the question put to him by the joint-magistrate already cited. But what possible reliance can be placed on the prisoner's assertion that he only wanted to *chastise*, not kill his victim, after his mofussil confessions? In which he states, he lifted her body out of the water, and found that she no longer breathed. The act of lifting it out being done to satisfy *himself* that life was extinct.

Though prisoners have denied their confessions, law officers, in their *futwas*, have held in many cases of murder, that *kissas* was incurred, and this, where there was much less evidence; and

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I cannot tell why the law officer of this court holds it not incurred in this case. It calls for exemplary punishment, and under the *futwa*, the prisoner may, and should, I think, be sentenced to imprisonment in transportation for life, with labor and irons.

The other prisoner, a chowkeedar of the village, and who acted as his go-between, or procurer, I consider may, on the evidence be convicted of accessaryship before the fact, and again, for example and because he was a public officer at the time, I would sentence him to seven years' imprisonment with labor and irons. Had he admitted his mofussil and foujdary confessions, complicity in inveigling away the deceased from her husband's roof, was all that could be brought home to him. But as he denies in this court making these confessions, the law may presume he was cognizant, or aware of more than was revealed in these confessions, and be held answerable for the death of the girl who, as watchman, he made over to her seducer, and was afterwards deliberately murdered by him.

With this opinion, I leave the case of the prisoners in the hands of the Court; who, if deserving of mercy, or a more lenient sentence, will be sure to extend it to them.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) This, we consider a case of cruel murder, and has been fully proved against the prisoner, No. 12, Ishur Ghose, by his voluntary confessions in the mofussil and before the magistrate. They are given in great detail and these particulars are supported by evidence. The prisoner produced the ornaments, which he confessed he had taken off the corpse, when he left it in the water, from a heap of straw. These were recognized, (as was the corpse, though in some measure decomposed and partially eaten,) by certain bracelets of brass and shells, which were on it, when first found. The prisoner's confessions are verified by respectable witnesses, he pleaded *not guilty* in the sessions court and endeavored to establish that the property, which was produced by him from his house, was pointed out to him by prosecutor and Mokeem burkundaz. His witnesses however deny all knowledge of that transaction.

The sessions judge is of opinion that the prisoner committed a cool and deliberate murder. The only thing in his favor is the answer to the question put to him by the joint-magistrate, alluded to in the letter of reference.

We observe that in the first part of his confession before the joint-magistrate, the prisoner distinctly and deliberately admitted his intention of killing the deceased, describing how he did it and how he ascertained that she was dead before he stripped and left the corpse in the water.

The judge further on remarks "what possible reliance can be

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placed on the prisoner's assertion, that he only wanted to chastise, *not* kill, his victim."

We entirely concur in the conclusions at which the judge has arrived, as to prisoner No. 12's guilt, but can discover no ground of mitigation of sentence in the circumstance upon which he suggests a minor punishment upon him. We convict him of wilful murder and sentence him to death.

The prisoner No. 13 is in no way connected with the murder; it is not shewn that when he inveigled the deceased to elope with No. 12, he, or indeed the prisoner, No. 12, entertained any idea of killing the deceased. No conviction of accessaryship before the fact can therefore follow. Though his confession to complicity in inveigling the deceased out of her home was denied in the sessions court, still no legal inference of an offence of a different and graver nature can be deduced against him. We therefore acquit him, and he must be immediately released.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND KULEE NUSHA

versus

OOZEER NUSHA (No. 7, APPELLANT,) NAZEERAH NUSHA (No. 8, APPELLANT,) NUBO NUSHA (No. 9, APPELLANT,) SOOKRAH NUSHA (No. 10,) ELAMDEE PRAMANICK (No. 11,) MUDHOO PRAMANICK (No 12,) AND KOBEER KHAN (No. 13.)

Rungpore.

1854.

November 30.

Case of OOZEER NUSHA and others.

Appeal rejected, the prisoners having killed the deceased alleged to be a thief, after having secured him.

CRIME CHARGED.—Prisoners Nos. 7 to 11, wilful murder of Alee Nusha, the brother of the prosecutor; Nos. 12 and 13, being accessary both before and after the fact to the commission of the said crime.

CRIME ESTABLISHED.—Nos. 7, 8, 9 and 10, culpable homicide and Nos. 11, 12 and 13, being accomplices in and instigating the same.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 15th August, 1854.

Remarks by the sessions judge.—On the 25th July, Mudhoo Pramanick, prisoner No. 12, reported at the thannah of Sherepore, that on the preceding night a thief had entered the house of prisoner No. 7, and was making off with a *lota* when he was seized and beaten by prisoners Nos. 7 to 9, so severely that he died. On investigation however, it appeared that deceased

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entered at night the hut where prisoner No. 7, and his wife were sleeping; prisoner awoke, deceased ran out, stumbled and fell and was seized by prisoner No. 7, and prisoner No. 11, a near neighbour coming in, they bound deceased with a rope, sent for prisoner No. 7's brothers, prisoners Nos. 8 and 9, who were at their master's house and with whom came their master's adopted son prisoner No. 10, and for prisoners Nos. 12 and 13, heads of the village. Deceased had been recognized to be a servant of a person who had some lands in the village, which were cultivated by deceased and three other servants, who all lived in a hut about a *beegha* off, these other servants were also called, told that deceased had been caught stealing and were asked to take charge of him, they declined and were ordered off and prisoners Nos. 11, 12 and 13, then ordered the other No. 4 to beat the deceased well, which was done. On their ceasing, deceased asked for water, was refused and shortly after died. Witness No. 1, mother of prisoners Nos. 7 to 9, witnesses Nos. 2 and 3, wives of two of them and witness No. 4, their sister, prove the fact of deceased being caught in their house at night by prisoner No. 7, tied by him and No. 11, and beaten by Nos. 7, 8, 9 and 10, by order of Nos. 11, 12 and 13, until he died. Before the joint-magistrate No. 3 alone mentioned that a bamboo had been used by any of the party, the police were consequently desired to search for and send in the bamboo which had been used, they send in two, said to be found in the house of the three brothers and the women now depose that these were used by prisoner No. 10, although from their former depositions in the mofussil and foujdary and the medical evidence, it is clear that the beating must have been inflicted by the fist or feet alone.

Witnesses Nos. 5, 6 and 7, fellow-servants of deceased, were called and went to prisoner No. 7's house at night, where they found deceased lying on the ground tied; they were asked to become security but declined. Nos. 11, 12 and 13, then ordered the others to beat deceased. No. 10 began to do so, and Nos. 7, 8 and 9 were standing round, when they, the witnesses, went away to their own hut, where they heard the sound of beating and deceased crying. From these witnesses' evidence it appears that deceased was a man of licentious habits, that he had before got into a scrape with a woman in the same village, and that he had been seen of late joking with witness No. 4, sister of prisoners Nos. 7 to 9.

Witnesses Nos. 8 and 9 saw deceased lying bound, prisoners Nos. 11 and 13 gave orders, and Nos. 7, 8, 9 and 10 beat deceased, prisoner No. 12, is not mentioned by these witnesses, but on the trial witness No. 8 pointed him out as having been present.

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The medical officer deposed that eleven ribs were broken, and that the chest showed marks of severe beating which he thought could not have been inflicted by the bamboos produced, as the skin was unbroken.

Prisoners Nos. 7, 8 and 9 confess at the sessions (as well as in the mofussil and foujdary) that they did beat deceased a very little, by order of prisoners Nos. 11, 12 and 13, corroborating in their details, the statements of the witnesses.

Prisoner No. 10 denies all knowledge of the matter. Prisoners Nos. 11, 12 and 13, only heard of the occurrence after it was over. Their defence is not established.

The law officer convicted the prisoners Nos. 7, 8, 9 and 10, of culpable homicide and Nos. 11, 12 and 13, of being accomplices, instigating thereto, and I concurred. Had the beating taken place immediately on deceased's being caught in his house by prisoner No. 7, I should not have been inclined to pass a severe sentence, as there is no doubt, deceased went there with the view of intriguing with one of the females of the family, the offence becomes much more serious when perpetrated after sending for the villagers and deceased's fellow-servants and trying to make deceased over to them. Still there was no intention to take life in my opinion, and I believe had it not been for the instigation of Nos. 11, 12 and 13, the heads of the village, and the example of No. 10, the other prisoners who alone received provocation, would have let deceased go without injury.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present Sir R. Barlow, Bart., and Mr B. J. Colvin.) Three of the prisoners Nos. 7, 8 and 9 have appealed, they charge the other prisoners and are in turn implicated by them, as the assailants of the deceased who was killed on the spot. The deceased, whether a thief as alleged, though not proved so, by the prisoners, or whether he had gone to the house for some other purpose, which appears very probable, had been secured and bound, the ill-treatment which he received to the extent of having eleven ribs broken, was quite unjustifiable; we see no reason to interfere with the sentence passed by the sessions judge.

SUMMARY CASE.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

MUSST. RAM MALLA.

Backergunge.

1854.

November 30.

Case of MUSST. RAM MALLA.

When a prisoner on trial at the sessions is considered by the judge to have been insane, when the offence was committed, the judge himself should pass the special verdict required by Act IV. of 1849.

CRIME CHARGED.—Wilful murder of Deep Chand Chokra and Musst. Roopee.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 14th October, 1854.

The following letter, No. 48, dated 21st October last, was submitted by the sessions judge of Backergunge.

The prisoners on the night of the murder, slept in the same house with her own infant and her grown-up son's wife, both of whom she killed in their sleep by blows on the neck with a *dao*. The prisoner's husband and her grown-up son were both absent from home at the time.

It appears, from the evidence of her relatives and of her neighbours, that the prisoner is subject to occasional, and generally short fits of mental derangement, and from her own statement it would seem that she committed the murder of her infant and daughter-in-law, in one of these fits. Such was her own statement to the darogah and to the magistrate, and the absence of any apparent motive or provocation gives great probability to that plea.

The verdict of the law officer finds the charge proved, but declares punishment barred, on account of insanity.

Considering that there is no doubt that the prisoner was demented at the time, and therefore not in a state to be held responsible for her actions, I submit the case to the Superior Court in order that it may pass the special verdict under Act IV. of 1849, if it should agree in considering the prisoner entitled to acquittal.

Resolution by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) No. 1012, dated the 23rd November, 1854.

The Court observe that the sessions judge should, as he is of opinion that the prisoner was, at the time of committing the murders, incapable of knowing that she was doing an act forbidden by law, have acquitted her, and entered the case in statement No. 8, under the Circular Order No. 31 of the 28th September, 1849. The Court accordingly direct that the proceedings be returned, with instructions to the sessions judge to dispose of the case with reference to Sections 2 and 3, Act IV. of 1849.

PRESENT:

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq., *Officiating Judge*.

GOVERNMENT AND TARAMONEE KUSBEE

versus

AMEER BUX.

Rungpore.

1854.

December 1.

Case of AMEER BUX.

Prisoner acquitted in appeal, the evidence being insufficient to support his conviction of having stolen property in his possession knowing it to be stolen.

CRIME CHARGED.—1st count, burglary in the house of the prosecutrix, Taramonee Kusbee, and theft therefrom of property, valued at Rs. 1,075-6; 2nd count, the prisoner is charged with receiving and having in his possession property, knowing the same to have been obtained by burglary.

CRIME ESTABLISHED.—Receiving and having in his possession property, knowing the same to have been obtained by burglary.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 31st May, 1854.

Remarks by the officiating sessions judge.—Prosecutrix, waking on the night of the 1st December, discovered that a burglary had been committed in her house and upwards of 1000 Rs. worth of property carried off, she gave information at the thannah next day, but no trace was discovered until 8th December, when one Alla Bux, a respectable fukeer, wrote to the darogah to say that Ameer Bux, prisoner No. 4, and his father (since deceased) had that day offered to sell him certain gold ornaments and valuable clothes, which he strongly suspected must be part of the property carried off from Taramonee's house, of which robbery he had heard, and that if prisoner's house was searched at once, he thought, some of the property would be found. The darogah immediately proceeded to the search, and inside prisoner's house nothing was found, but a few paces off behind the house, in some low jungle, a bundle of eight pieces of cloth was found and the whole were claimed as her own by prosecutrix, but only three pieces were specified in the inventory first filed by her at the thannah. Prisoner denied all knowledge of the clothes. He could throw no discredit however on the evidence of Alla Bux, who deposed that prisoner and his father came to him on the morning of the 8th, and requested a private interview, when they said they had certain gold ornaments and valuable pieces of cloth to dispose of cheap, but they did not bring the articles with them, and on his agreeing to purchase, provided the bargain was made at the thannah in the presence of the police, they refused and went away, on which, he immediately wrote to the darogah as abovementioned. This evidence

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does away, I think, with any doubt caused by the clothes being found outside prisoner's house, as it shews that he must have had such clothes in his possession that day and none were found inside his house, prisoner also bore a very bad character, living and dressing well without any visible means of livelihood, and he had before suffered a year's imprisonment for theft. On these grounds, the jury consisting of Eshan Chunder Roy, Chunder Seekhur Muzoomdar and Khasal Chunder Bose, found him guilty in the 2nd count, and agreeing with them, I sentenced him as mentioned.

Sentence passed by the lower court.—Imprisonment with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We cannot uphold the conviction. The fukeer's story is not supported in any way, and the property was found in a wild pine-apple jungle near the prisoner's house, but accessible to every one, and the clothes do not correspond with those reported by the prosecutrix to have been stolen from her house. There is not sufficient on record to warrant a presumption even of the prisoner's guilt on any of the counts in the indictment. The prisoner must be released.

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PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

December 1.

Case of RAJKISTO CHUNG and another.

GOVERNMENT

versus

RAJKISHTO CHUNG (No. 1,) AND RUTTON DAM (No. 2.)

Two prisoners convicted of having belonged to a gang of thuggs sentenced to transportation for life.

CRIME CHARGED.—1st count, accomplices in the murder by thuggee of Mahomed Diem and two persons (their names and residence being unknown) who were his companions near Daood Kandy, zillah Tipperah; 2nd count, plundering 50 Rs. and one *goorgooree* and having participated in the plundered property; 3rd count, being by profession thuggs and having belonged to gang of thuggs.

Committing Officer.—Lieut. C. H. Keighly, assistant general superintendent and joint-magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 27th October, 1854.

Remarks by the sessions judge.—The prisoners are charged with thuggee, in one particular instance, and in a third count, with being professional thuggs. No corpse having been found, and none of the plundered property being forthcoming, the

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particular instance charged is, as usual, not satisfactorily proved, and I agree with the law officer in acquitting the prisoners.

As regards the third count, I would observe that in 1841, all the approvers (witnesses in this case) deposed to acts of thuggee by the prisoners, and that in their depositions now taken, they do not materially differ from what they then said. The slight discrepancies rather confirm the evidence, the place Furreedpore is named instead of Tipperah, a matter of little importance, by Gopee Biswas, (No. 1,) who, in the deposition taken in 1841, says, he applied the handkerchief, here he said, it was Rajkishto (the prisoner No. 1, who did so,) but in the statement of 1841, in a separate column, it will be seen that Rajkishto is named as the murderer.

It would undoubtedly be more satisfactory if the depositions in 1841 had been taken in detail, but the office of the assistant appears to have been some years ago in bad order, on which subject I submit copy of a letter,* No. 31, of 27th April last,

* From Lieut. C. H. Keighly, assistant general superintendent to S. Bowring, Esq., sessions judge on duty Furreedpore, Dacca, No. 31, dated 27th April, 1854.

I have the honor to acknowledge the receipt of your letter of the 24th instant, from Furreedpore, enclosing the copy of a resolution of the Nizamut Adawlut, calling for the "original detailed confessions" of the approvers in the case noted in the margin.* In answer, I beg to forward you the original confessions of Suroop Nag, (lately deceased) and Kishen Sein, of the affair of Shabar, in which Kanahee Buxshee was murdered, and from these you will perceive that the documents which have been considered by the Sudder "only an abstract from the general register of thuggs" are the true copies attested by one of the only confessions I have in this office. Although the form is irregular and entirely different to that which has always been in use in the Hooghly office, still you will perceive that the expeditions are carefully described in all points, though only signed by the assistant general superintendent without the usual "attestation on honor;" the original confessions of Ramlochun Sein, the other approver who was engaged in the murder of Kanahee Buxshee is in the *nuthee* of "Cheedam Mistree," attached to the papers in the case. With regard to the confessions of the other approvers, from which the general charge of thuggee is brought against the accused, I beg to state that every expedition in which the name of the accused is mentioned has been carefully copied attested, by me, and attached to the misl; all in the form of the accompanying with the exception of that of approver Goluk Deb, who was only admitted as an approver in 1852. There is no original confession of Raee Chand Chung, in this office. For several years after the establishment of the Dacca thuggee office the dangerous system appears to have been allowed of permitting the approvers to make their confessions at different times in detached statements, and there are, now, seven of the first approvers made in this office who do not appear to have made "original confessions" beyond the general one of being thuggs. The confessions of the other approvers were taken in the accompanying form until this office was incorporated with "the Hooghly one." I can only add that the evidence of these approvers has always been received by the higher courts, and I think the Sudder, if they look over the "original confessions," will see that the expeditions are accurately and fully described

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addressed by Captain Keighly to me on the trial of Akool Chung for thuggee.

Considering the state of the assistant's office, I think the evidence in the present case as good as can be procured, and would therefore convict the prisoners on the 3rd count, and sentence them to transportation for life.

Resolution of the Nizamut Adawlut, No. 1,002, dated 17th Nov., 1854. (Present: Messrs. H. T. Raikes and J. H. Patton.)

The Court, having perused the proceedings connected with the case of Rajkisto Chung and Rutton Dam, observe that the only evidence against the prisoners is contained in the depositions of approvers who are said to have named them in their respective statements recorded in 1841. The proof of this is said to be found in the abstract statement of confessions prepared in the thuggee superintendent's office, bearing that date. The pri-

although not attested by the assistant general superintendent in the manner now usual. In conclusion, I must inform you as briefly as possible the particular reasons I had for requesting Mr. Dampier's permission to visit these districts, since the Dacca and Hooghly offices were incorporated in June, 1849. The assistant general superintendents have been mostly engaged in the arrest of the Keechuck and Budduk Tribes in the Midnapore and Balasore districts and the Dacca portion of the office has been much neglected. On my joining the appointment in 1851, I found in the case of Cheedam Mistree, (committed 1850,) the Sudder drew the particular attention of the assistant general superintendent to the necessity of inquiring into the combination that appeared to exist, either amongst the oldest approvers or those the last admitted. On the arrest of Goluk Deb, in 1852, and comparing his detailed confession with that of the others, and on taking the statements of all the approvers of the Dacca division regarding certain men denounced in Goluk Deb's confession, I found that having no "original confessions" of the older approvers I had no check upon them whatever, since then several circumstances have confirmed my impressions that a combination does exist amongst them, and my desire has been and is to prove it. After carefully examining all the papers concerning "Akool Chung," I conceived I could not well have a clearer case. I found his name entered in the original list of Dacca thuggs denounced by three of the first approvers* made in this office and by no less than eight of my present approvers. The only defence made by the accused was, that he was the brother of Raee Chand Chung, through whose instrumentality these men had been arrested and convicted, but on referring to my office papers, I found that Raee Chand Chung had nothing to do with the arrest of any of the approvers with the exception of Goluk Deb. Moreover, all the old approvers acknowledged that the accused had lived with his brother all the time he was in the constant habit of going on thuggee expeditions. Such are the outlines of the present case.

* Kishen Dos, Sheikh Surroop and Ram Dhun Bose (all since dead.) There are no original confessions of these men.

There are still a very large number of denounced men in these districts, and though I do not believe that many of them now work together in gangs, still that they do so occasionally is fully proved by papers in this office and as long as a combination exists amongst any body of my approvers, all my endeavours to stop the system entirely must be rendered futile. Apologizing for the length of my letter.

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soners, however, were apparently left undisturbed until the early part of 1854, when registers were made of suspected persons and proceedings commenced for their apprehension. Under these circumstances the apprehension and trial of the prisoners took place.

As the Court observe that the statements of confessions kept in the thuggee office are greatly relied upon as tests of the truth of the approvers' depositions, and those statements are drawn up with separate columns, showing the names of the parties implicated in the thuggee expeditions, the Court wish to be informed what guarantee can be given that the names inserted in the column alluded to, were really recorded at the time indicated, viz., in the year 1841. As the fact that so long an interval as thirteen years, namely, from 1841 to 1854, elapsing between the accusation and arrest of the prisoners, is calculated to raise doubt as to the authenticity of that record, explanation therefore on this point is deemed necessary, and the sessions judge, will be directed to call upon the thuggee assistant to supply it.

From the sessions judge of Dacca to the register of the Nizamut Adawlut, No. 665, dated 27th November, 1854.

I have the honor to submit copy of a letter of this day's date, from the assistant general superintendent, furnishing the information called for in the Court's resolution, in No. 1,002, of the 17th instant.

From Lieut. C. H. Keighly, assistant general superintendent, to S. Bowring, Esq., sessions judge of Dacca, dated 27th November, 1854.

I have the honor to acknowledge the receipt of your letter, No. 660, of the 25th instant, forwarding a resolution of the Sudder Court in the case of Rajkisto Chung and Rutton Dam.

My office was despatched from this on the morning of the 25th for Hooghly, but as the information required can be answered without any reference to the records, I lose no time in doing so.

The Court wish to be informed, "what guarantee can be given that the names inserted in the column alluded to were really recorded at the time indicated, viz., in the year 1841." If they will be good enough to refer to the extracts of confessions of 1841, they will find them attested by the signature of Capt. Hollings, the assistant general superintendent at that time, and my signature is attached to them as "true copies;" my letter of the 27th April, No. 31, explains the irregular manner in which the original confessions of the approvers of this portion of the office were taken, and that that explanation was deemed satisfactory is evident from the accused party (regarding whom the explanation had been called for) having been convicted.

With regard to the long period that has elapsed between the denouncement of the prisoners and their apprehension, I beg to state that the thuggee office has not been at Dacca since 1848, and previously to that, the confusion the office was in, on the

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removal of Capt. Hollings from it, will account for a great number of the denounced thuggs (still at large) not having been previously arrested. The registers made by me during 1853-54, were collected from the old registers, confessions and records, no new evidence was taken, but old papers were compared, and in those cases in which the evidence appeared to me conclusive, I proceeded against the parties at once.

I trust this explanation will be deemed satisfactory.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Read a letter from the sessions judge of Dacca, dated 27th November, 1854, in reply to the Court's Resolution No. 1002 of 17th November last, and transmitting copy of a letter dated 27th November, 1854, from the assistant general superintendent to be laid before the Court. With reference to this letter and the proceedings held on the trial of the prisoners, Rajkishto Chung and Ruttou Dam, we find that these persons were denounced by confessaries in 1841, and in consequence of the removal of Captain Hollings, from the thuggee office, no steps were at that time taken to bring these prisoners to trial; that the record of the confession made is duly attested by the signature of Captain Hollings and in the absence of any reason to discredit its entire authenticity, we consider it may be relied on as attesting and confirming the more recent evidence given by these same confessaries as approvers. There is also further confirmatory proof against the prisoners in the confessions of Kishore Sein, Ramlochun Sein and Netai Chung wherein the names of these prisoners occur as taking part in the thuggee expedition. These confessions were also recorded as far back as 1841, and are now in substance repeated by the same parties as approvers, and go to prove the identity of the prisoners as professional thuggs. In concurrence with the sessions judge, we convict the prisoners of the third count of the indictment, viz., having belonged to gangs of thuggs and sentence them, as recommended, to transportation for life.

Dinagepore.

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Case of DOOKHUL PULLY and another.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

CHERAM PULLY AND GOVERNMENT

versus

DOOKHUL PULLY (No. 1,) AND CHUNDY PULLY (No. 2.)

A prisoner. who in prosecution of burglary killed

CRIME CHARGED.—1st count, wilful murder of Poshoo Pully; 2nd count, burglary with murder; and 3rd count, aiding and abetting.

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the deceased, was sentenced capitally. Another with him was sentenced to transportation for life.

Committing Officer.—Mr. H. Nelson, magistrate of Dinagépore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 19th September, 1854.

Remarks by the sessions judge.—The prisoners were charged with, 1st, wilful murder of Poshoo Pully; 2nd, burglary with murder; 3rd, aiding and abetting.

The prosecutor, brother of the deceased, states that late on the night of the 16th of August, 1854, on hearing his brother's wife cry, thief, he got up, took a *latee*, and when within a few yards of the prisoners, observed them going out of his brother's house. He states that it was moonlight and that he pursued them for some way when they got into a jungle and sugar-cane field. Three neighbours, witnesses Nos. 2, 3 and 4, joined in the pursuit and recognized the prisoners. The wife of the deceased, witness No. 1, states that the deceased, finding two men in his house in the act of stealing *goor*, seized one of them, when she got up and lighted a straw wisp, saw her husband struggling with the prisoners, when No. 1, Dookhul, cut her husband on the neck and both the prisoners ran out of the house. The deceased was found with a deep cut on his neck and said that on observing the prisoners in the act of stealing his *goor* (raw sugar) he had seized No. 2, Chundy, when No. 1, Dookhul, cut him on the neck with a *dao* or knife and both made their escape. The prisoners, not having come with the other neighbours, were sent for and confronted with the deceased, who accused them as above, and they remained silent or, according to one witness, allowed that they were dead or doomed.

The deceased died on the following day. The civil surgeon's evidence is as follows. "I found an irregular deep wound on the neck, apparently caused by a sharp-pointed instrument, the wound, in my opinion, was not caused by deceased's own hand, the carotid artery was divided, and deceased had bled to death. The wound from its irregular appearance seemed to have been inflicted during a struggle, such as you mention between the two parties." The prisoners' defence and their cross-examination of the witnesses, for the prosecution, failed completely, the former being inconsistent and the latter eliciting nothing in their favor.

In the mofussil the prisoners pleaded there was no enmity between them and the deceased, and that they could not account for his having accused them. In the foujdary, they pleaded that deceased, when asked by them to name the persons who wounded him, gave no answer; that the prosecutor said he had not been able to recognize the thieves, and that during their absence, when sent for, other villagers, the mundle and his party, got up the plot of accusing them. After commitment, they also pleaded a dispute about a *julkur* between them and the deceased.

In the sessions, their defence was much the same as in the

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foujdary as to the alleged *julkur* dispute and the plot to accuse them; but the assertion that the prisoner, No. 1, Dookhul, was sent for, being gol-mundle (or leader of the village patrol,) and that he and the other prisoner, after being confronted with the deceased, were sent for other villagers, was not supported by their witnesses and was clearly proved by some of them and by the evidence for the prosecution to be false.

The principal witnesses for the prisoners were five men, not named by them in their foujdary answers either before or after commitment, but while the case was pending before the magistrate, in a petition stating that the wife of the deceased was a bad character and had accused them at the instigation of her paramour, who was jealous of their advances. Three of the said witnesses, said by the prosecutor to be relations of the prisoner, No. 1, Dookhul, instead of proving the intrigue and plot, said that they had been with the said prisoner in his house during the whole of the night, and the other two, one of them uncle to the prisoner, No. 2, Chundy, said they had been all night in his house, where they kept him in durance on account of money due by him to a mahajun, for which the uncle was surety. Their evidence is contradictory, and altogether improbable, as they could give no satisfactory explanation of their having been named by the prisoners to prove an intrigue and plot, of which they pleaded ignorance, and not to prove their having been during the night in their own houses with the witnesses, and in their presence required to go to the house of the deceased, after he had been wounded. On the other hand, the evidence for the prosecution is clear and in no way liable to suspicion.

The *futwa* of the law officer convicts the prisoners of burglary attended with murder, in which I concur, and recommend that the prisoner, No. 1, Dookhul, be sentenced to suffer death, and the prisoner, No. 2, Chundy, to imprisonment for life in transportation beyond seas.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) This is an atrocious case of murder, perpetrated in the prosecution of a burglary. The culprits were near neighbours for years of the deceased, whose premises they broke open at night for the purpose of theft; and being seized, one of them Dookhul, prisoner No. 1, stabbed and cut the deceased mortally on the neck. The evidence against the prisoners is full, distinct and free from any suspicion. The deceased and his wife recognized them both, and saw Dookhul inflict the fatal wound; and both prisoners were recognized, running away from the house of deceased by four persons. The defences set up by the prisoners proved utterly unfounded. We therefore concur with the sessions judge, and convict both prisoners of murder in prosecution of burglary; and, as recommended by the sessions judge, sentence Dookhul, prisoner No. 1, to be hanged, and Chundy, No. 2, to transportation for life.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

RAMMONEY BURNICK AND GOVERNMENT

versus

JUGGERNAUTH BURNICK (No. 1, APPELLANT,) RAMDOSS DOSS (No. 2, APPELLANT,) KASHEENAUTH BURNICK (No. 3,) RAMJOY DOSS BHOOYEAH (No. 4,) AND RAMJOY DOSS (No. 5.)

Tipperah.

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Case of JUGGERNAUTH BURNICK & others.

Conviction and sentence passed by the sessions judge in a case of culpable homicide, upheld in appeal.

CRIME CHARGED.—Nos. 1 to 4, wilful murder of prosecutor's brother, Ramkonnye Burnick; No. 5, accessary after the fact to the above murder.

CRIME ESTABLISHED.—Nos. 1 to 4 culpable homicide of Ramkonnye Burnick, brother of the prosecutor; No. 5, accessary after the fact to the above homicide.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—The prosecutor in this case lives in the village of Sonahpore, in thannah Ameergong. On the night of the 28th of Assaur, 1261 B. S., he was informed by his brother, the deceased, Ramkonnye, that he was about to go on some business to the house of Phizooram Dhoobee, one of his neighbours. The next morning, when he rose, he missed his brother from his usual place, but supposed that he had gone, as he had said he would, to the dhoobee's house. The prosecutor then himself went to a *haut* at some distance. He did not return home until the Thursday ensuing, when he was much alarmed by hearing from his sister, Chunder Kullah, that no news had been heard of their brother since he had left home last.

His inquiries about his brother proving fruitless, he informed the village chowkeedar of the matter, and went with him to the Ameergong thannah, where he stated his suspicion that his brother had been made away with by the first four prisoners, who, he well knew, were bitter enemies of his brother.

The parties were thereon arrested, when prisoners, Juggernauth No. 1 and Ramdoss Doss No. 2, confessed that they had beaten and kicked the deceased, and that he had died under their hands from the ill-treatment he had received.

As their confessions involved the 5th prisoner, Ramjoy Doss, as an accessary after the fact, he also was arrested, and acknowledged his having been aware of the deed, and having afterwards

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assisted the other four prisoners to conceal the body. The information supplied by him ultimately led to the discovery of the body, which was found lying under a tree in a spot near the house of a man, named Rampersaud, living in mouzah Kalessur. The finding of the body not taking place until twelve days after the man's death, little more than a skeleton remained. The deceased was a man in the prime of life, about twenty-seven or twenty-eight years, and was in perfect health at the time of his disappearance.

Before the magistrate, prisoners, Juggernauth No. 1, Ramdoss Doss No. 2, and Ramjoy Doss No. 5, repeated their confessions.

At the sessions all the prisoners pleaded not guilty.

The evidence of four persons, who were witnesses to the fact, clearly proved the main charges against the prisoners. Three women, witnesses Nos. 1 to 3, living in the same village with the prisoners, and who themselves occupied the same *baree*, depose distinctly to having witnessed the assault by the four prisoners upon the deceased, who was thrown down by them and beaten and kicked when in that position. This occurred about midnight of the same day on which deceased had left his house in the manner detailed above. The night was a moonlight one, and they could see clearly what passed. The women screamed out on seeing what happened, when the prisoners abused and threatened them, compelling them to silence. The four prisoners then took up the body, which the eye-witnesses all state being heavy like that of a dead person, and carried it off in an easterly direction towards the hills. These witnesses state further that Gooroodoss, witness No. 4, the brother of the prisoner, Ramdoss Doss No. 2, came up to where the prisoners were standing after the assault, and spoke to the prisoners. This man was ultimately directed by the joint-magistrate to be retained as a witness, as his evidence was most necessary for the elucidation of the case. In his evidence, he states that he had seen the prisoners in consultation together, and had heard from his brother, prisoner, Ramdoss Doss (No. 2,) that they had been consulting about their design to kill the deceased. The woman, Somittra, cousin of the above witness, and who lives in the same house with him and prisoner, Ramdoss Doss (No. 2,) states in her evidence, that on the day in question, she saw the prisoner, Juggernauth, take Ramdoss Doss, (prisoner No. 2,) aside and speak to him in private, as if in consultation. Labonee Doss, another witness, (No. 20,) residing in mouzah Kalessur, states that he found a body lying in the paddy-field belonging to him, and that he and his neighbours, Ramgopaul and Rampersaud, (witnesses Nos. 21 and 22,) recognized it as being the body of Ramkonnye, whom they had known previously. Afraid of being drawn into some trouble from the body being found near their dwellings, they aided Labonee Doss, (witness No. 20,) to re-

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move the body from where it was found by them, to the spot where it was afterwards, on their information, found by the police. (The spot where the body was found by these witnesses, being that where it was first thrown by the prisoners, was about two *coss* from the house of the deceased, and the place where it subsequently was discovered, on the information by the police, was about half a mile further off.)

That there had been enmity for some time past, between the first four prisoners and the deceased, is clearly proved by the evidence of several witnesses. The prisoner, Ramjoy Doss, (No. 4,) had an illicit connexion with the sister of the deceased, who had had a quarrel with him on that account, and had beaten him. The deceased had also quarrelled and fought with Kasheenauth, (prisoner No. 3,) with whom he had a disagreement about his not affording proper support to his (deceased's,) niece, the woman Jye Kallee who was married to Kasheenauth's brother, Ooma Kanth, then absent at Akyab. It further appears that the deceased had an intrigue with the woman, Razee, the wife of a man, named Ramdoss Putdar. This woman had afterwards for her lover the prisoner Juggernauth, so that *that* person also nourished ill-will towards him. The fourth prisoner, Ramjoy Doss Bhooyeah, had carried on an intrigue with the deceased's sister, Chunder Kullah, and there was ill-will between them on that account.

A neighbour of the prisoners, named Komul Doss, produced a *tauveez* or amulet given to him by the prisoner, Ramdoss Doss, two or three days before the arrival of the darogah to investigate the case. He had been requested by the prisoner to keep it for him. This *tauveez* was recognized and sworn to by two witnesses as well as by the prosecutor, as being the property of the deceased Ramkonnye.

The confessions of the prisoners, Juggernauth Burnick (No. 1,) Ramdoss Doss (No. 2,) and Kasheenauth Burnick (No. 3,) are attested by the witnesses, in whose presence they were taken in the mofussil and before the magistrate.

Of the manner in which the deceased met his death, there can exist no doubt whatever. The confession of three of the prisoners as well as the positive and direct evidence of eye-witnesses sufficiently attest the fact, but nothing elicited in the case can sustain a charge of *wilful* murder against the prisoners. Some weight may be attached to the circumstance of the consultation of the prisoners beforehand as showing malice afore-thought, and as stated by one witness, Gooroodoss Doss (No. 4,) a deliberate design to put him to death, but this man's evidence goes no further than that he had *heard* from his brother, Ramdoss Doss, (prisoner No. 2,) that the other prisoners had designed to kill the deceased and had wished him to join them. This even, if admitted to be true, would not affect the other prisoners, being

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only the allegation at second-hand of one of them. The confessing prisoners, Juggernauth Burnick (No. 1,) and Ramdoss Doss (No. 2,) made no mention of their having entertained any further designs against the deceased than to give him a beating; and this assertion is supported by the facts, for had the prisoners really cherished the intention of putting him to death, they would have used very different means to effect their purpose, than what their own avowal and the evidence of the eye-witnesses show that they actually employed. No weapons of any kind were used, which would certainly not have been the case had they designed to murder the man, and all the evidence tends to show that they intended to effect nothing more than what some of themselves allege, viz., to inflict a beating upon a man towards whom they bore a grudge and jealousy. In this, as in many other similar cases, the result went further than what was ever designed or contemplated by the actors.

In concurrence with the *futwa* of the law officer, who held that the act of the prisoners amounted to culpable homicide, I sentenced Juggernauth Burnick (No. 1,) Ramdoss Doss (No. 2,) Kasheenauth Burnick (No. 3,) and Ramjoy Doss Bhooyeah (No. 4,) as principals, to five years' imprisonment with labor in irons, and Ramjoy Doss (prisoner No. 5,) as an accessary after the fact, to three years' imprisonment, and to pay a fine of 30 Rs., otherwise to labor until the expiry of the term of his sentence, or until payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) There are clear confessions of guilt on the part of these prisoners before the police and the magistrate, and though repudiating these confessions at the sessions, they cited no witnesses to their defence. The convictions of the other prisoners have been confirmed by the Court already. We reject this appeal.

PRESENT:
A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT
versus
SOOBUDRA BUSTOMEE.

Rajshahye.

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Case of SOOBUDRA BUSTOMEE.

Held that a prosecutrix retracting her accusation should not have been sworn, so as to implicate her in contradictory statements on oath.

CRIME CHARGED.—Perjury, in having on the 27th day of July, 1854, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the assistant magistrate of Rajshahye that Roopchand Talookdar and Bindabun Muzmadar, had forcibly and separately committed a rape upon her person, and that according to the order of the said Roopchand Talookdar and Bindabun Muzmadar and Chunderkishore Thakoorta, Jumiruddin Jemadar and others had committed an aggravated assault upon her with shoes and inflicted wounds upon her person, and kept her in confinement, and in having on the 21st August, 1854, again intentionally and deliberately deposed, under solemn declaration taken instead of an oath, before the said assistant magistrate, that the said Roopchand Talookdar and Bindabun Muzmadar and Chunderkishore Thakoorta and Jumiruddin Jemadar, &c., had never committed any assault upon her, and that she had been induced by others to make this complaint, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. J. C. Dodgson, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 12th September, 1854.

Remarks by the sessions judge.—The charge in a manner explains the case, but the following antecedents may as well be mentioned to elucidate it further. The late uncovenanted assistant to the commissioner, Neelmony Bysack, Doorgapershad Dutt and Ramkishore Roy, the serishtadar of the principal sudder ameen's court, are all shareholders in the *mandah* estate in this district, and there are constant disputes among these shareholders for their shares, as well as about ryuts. The prisoner is a Bustomee and first complained to the magistrate of the double rape by the naibs of Neelmony and Doorgapershad, who afterwards turned her out with indignity, and then of being confined by the naib of Ramkishore. The case was referred to the assistant, and she gave her deposition on the 27th July, entering very much into detail as to what had happened to her. On the 21st August, she gave in a petition to the assistant to

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the effect, that she had been plundered of her ornaments, by *peadahs* of Juggut Chunder, another shareholder, and who had instigated her to complain against the other naibs; she was on this examined again on a solemn declaration, and on it deposed that her first deposition was false, and the complaint against the naibs untrue In the court, she pleaded guilty to the charge, admitted both depositions given by her, and brought forward in her defence witnesses to prove her allegation that she had been plundered of her ornaments, but her witnesses, though they spoke to her losing some ornaments, could not say if she had been instigated by Juggut Chunder to bring a false charge against the naibs of the other shareholders. It appeared that while she was accusing them of rape and false imprisonment, a *byragee* had complained at the *thannah* (on her behalf) against Juggut Chunder, and the prisoner, when she discovered this, changed her *tactics*, and in support of the *byragee's* statement accused Juggut Chunder and his people of ill-treating her. The other case seems to have also been before the assistant for investigation. The assessors, two *vakeels* of the court, were then called upon to give their verdict, and though they find that she had given contradictory statements, add it was not intentional or deliberate perjury. Now I differ entirely from this finding, and being perfectly convinced that the whole are a tissue of lies from beginning to end, and that the prisoner, by her own admission, perjured herself in her first deposition before the assistant made on the 27th of July, I have convicted her of perjury, and sentenced her as herein stated. Had the *byragee* also been made over, I think he might have been convicted of the same offence. Some one must have suborned them, but this was no excuse for either, and the woman is a very sharp, shrewd person, and what she said *must* have been with deliberation and intentionally on a point material to the case; and being false there can be no doubt she was guilty of perjury. The only thing is, that the petition, as well as deposition, had reference to another case, and the contradictory statements arose therefrom. The Madras Court seem to make some distinction on this subject, and perhaps would not hold the prisoner's offence to be perjury, but the Calcutta Court have not, that I am aware, ruled that under such circumstances the contradictory statements would not amount to perjury, *vide* Madras Select Reports, page 73.

Sentence passed by the lower court.—Three years' imprisonment with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. B. J. Colvin.—The doubt expressed by the sessions judge, in consequence of the petition and deposition having reference to another case, and the contradictory statements arising therefrom,

is without good foundation, for the contradictory statements are contained in one and the same case; but I cannot concur in this conviction. When the prisoner presented her petition of 21st August, contradicting her deposition of 27th July, she should not have been sworn thereto; the principle of the case Government *versus* Sheebdyal Dhanook, decided on the 25th June, 1847, is applicable; the prisoner, after taking her answer, might have been charged with perjury in having falsely deposed on the 27th July, on proof of the falsehood of her evidence of that date being obtained. I would release her.

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Mr. A. Dick.—I concur with Mr. Colvin that the prosecutrix, Soobudra, should not have been put on her oath, and that she must be released. She should have been punished for false and malicious complaint under Section 5, Regulation XI. 1811.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

TEELUCK BHUGUT AND GOVERNMENT

versus

JEETOO (No. 9,) DHURMA (No. 10,) RAJOO (No. 11,) BUBUA (No. 12,) DHOOKUN (No. 13,) BHAGBUT (No. 14, APPELLANT,) KULLEA (No. 16,) DEBA (No. 18,) ROOPA (No. 19.)

Bhaugulpore.

1854. December 1. Case of BHAGBUT and others.

Conviction and sentence passed by the sessions judge on a charge of dacoity and receiving plundered property upheld in appeal.

CRIME CHARGED.—Nos. 9, 13, 14, 16 and 18, 1st count, dacoity with arson and plunder of property valued at Rs. 178-3, in the house of Teeluck Bhugut; 2nd count, receiving and possessing plundered property knowing at the time of receiving it that it had been obtained by dacoity with arson and plunder. Nos. 10, 11, 12 and 19, 1st count, dacoity with arson and plunder of property to the above value.

CRIME ESTABLISHED.—Nos. 9, 10, 11, 12 and 19, dacoity and plunder, Nos. 13, 14, 16 and 18, receiving and possessing plundered property knowing at the time of receiving it that it had been obtained by dacoity and plunder.

Committing Officer.—Mr. R. O. Heywood, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 3rd July, 1854.

Remarks by the sessions judge.—Prisoners plead *not guilty.*

Prosecutor's house was attacked, in the middle of the night, by a gang of robbers with lighted *mussals* and armed with clubs; they committed no very aggravated outrage, the burning of part

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of the premises attributed to them being, I think, doubtful, the charges as below are distinctly proved against prisoners, Nos. 9, 10, 11, 12, 13, 14, 16, 18 and 19. Their defence is generally denial of former confessions which were however all clearly attested before this court.

The jury bring in a verdict of guilty against all the above but Roopa No. 19, the proof against whom, his own confession at the thannah only, they do not consider sufficient: it is of so clear and distinct a nature, however, and so well corroborated by the general circumstances of the case that, I cannot release him with Nos. 15 and 17, against whom there is certainly not sufficient evidence to convict.

Prisoners Jeetoo No. 9, Dhurma No. 10, Rajoo No. 11, Bubua No. 12, are convicted, on their own confessions in the mofussil and before the magistrate, of dacoity and plunder and sentenced Jeetoo, as servant (chowkeedar) of the complainant, to fourteen years' imprisonment in banishment with labor in irons and two years more in lieu of corporal punishment in all sixteen years, Dhurma, Rajoo, Bubua, to fourteen years' imprisonment in banishment with labor in irons. Roopa, No. 19, is convicted of the same on his own well attested confession in the mofussil and sentenced to fourteen years' imprisonment as above. Dhookun is convicted on the 2nd count, on his own confession in the mofussil and before the magistrate, and sentenced to fourteen years' imprisonment in banishment with labor in irons.

Bhagbut No. 14, Kullea No. 16, Deba No. 18, are convicted on the second count, No. 14, on the proof of stolen property found in his possession, Nos. 16 and 18, on the same and their own confessions in the mofussil fully attested before this court, and sentenced to fourteen years' imprisonment in banishment with labor in irons.

The crime of dacoity is on the increase among the *malpaharees* of the southern jungles, they can hardly be called professional dacoits, as they are cultivators of the soil, and their depredations are generally confined to their own immediate neighbourhood, and induced almost invariably by extreme poverty and want. The punishment cannot on the latter account be mitigated; however the sad truth may be deplored; I have added no fine under Act XVI. of 1850, the amount of property stolen not being satisfactorily proved in evidence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner, Bhagbut, has been able to urge nothing in his appeal. We find it proved that property identified by the prosecutor and his witnesses was discovered in his house and, therefore, see no reason to interfere in his favor.

PRESENT:

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq., *Officiating Judge*.

GOVERNMENT AND NOBOKISHEN PODDAR

versus

SHEIKH TUMEEZOODDEEN (No. 16,) AND SHEIKH ROHEEMOODDEEN ALIAS MYTON MEA (No. 17) APPELLANTS.

Dacca.

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Case of SHEIKH TUMEEZOODDEEN and another.

Two prisoners convicted as accomplices in dacoity and possessing the plundered property sentenced to ten years' imprisonment.

Appeal rejected.

CRIME CHARGED.—(No 16,) 1st count, belonging to a gang of dacoits, and being the prime instigator of a dacoity committed in the house of Nobokishen and Brejonath Poddars, prosecutors; 2nd count, being accessary to the dacoity before and after the fact; 3rd count, being privy to the case; 4th count, receiving and possessing part of the plundered property, knowing the same to have been so obtained. (No. 17,) 1st count, being accessary to the dacoity before and after the fact; 2nd count, being privy to the case; 3rd count, receiving and possessing part of the plundered property, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Nos 16 and 17, accomplices in a dacoity and possessing plundered property, knowing the same to have been so obtained.

Committing Officer.—Mr. W. H. Brodhurst, officiating joint-magistrate of Furreedpore.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 22nd July, 1854.

Remarks by the sessions judge.—This case was tried by the commissioner at the Furreedpore sessions in February last, but in regard to two prisoners ordered to stand over for the attendance of two witnesses, of whom one only has now appeared.

The two prisoners tried live in one homestead, on which premises were found buried two articles of the property (Nos. 24 and 25,) plundered from the prosecutors. The witnesses, Nos. 139, 140, 144 and 145, depose that before the occurrence of the crime, a number of persons, among whom were the prisoners, Nos. 1 to 3, already convicted (and in whose possession some of the plundered property was found) assembled at the house of these prisoners, Nos. 16 and 17, and the witnesses, Nos. 146 and 147, depose to the hiring of a boat by the prisoner, No. 16. The witnesses, Nos. 144 and 145, likewise state that Tumeezooddeen, prisoner, No. 16, returned home after absence, when the robbery was committed, and No. 144 also to the deposit of arms in the house. The prisoner, No. 16, left the house

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on horseback, but whether he proceeded far by that mode of conveyance or by boat, does not appear.

The prisoner, Tumeezooddeen, No. 16, pleaded *not guilty* at the thannah, before the magistrate and in this court. He attempted to prove that though absent from home, he was in the house of his father-in-law, when the crime was committed, but his witnesses, though remembering exactly the date, 22nd Jeyte, 1260, could not give that of four days back, on which they left Furreedpore for Dacca.

Roheemooddeen (prisoner No. 17,) admitted before the police and the magistrate that he had received the property for his uncle, the prisoner, No. 16, from the prisoner, No. 3. In this court, he said the property had been concealed by the police, and he, prisoner, had been ill-treated. His witnesses, and one for the prosecution spoke to threats, but the ill-treatment is not proved.

The first prisoner, No. 16, is of bad character. He was once a moonsiff in this district, and has since been twice apprehended on charges of dacoity and released. By the report of the record-keeper at Jessore, it would appear that he was imprisoned one year, having been unable to procure security for his good conduct.

The circumstance of the property having been found on his premises, the assemblage of the dacoits there with his known bad character, have caused me to convict the prisoner, No. 16, of being an accomplice.

The police fairly accounted for the manner in which they obtained information of the robbery. No enmity with the prisoners has been shewn, or if the property really had been hid, as now stated, how it was procured by the police for such a purpose.

I passed the same sentence as the commissioner had done on the prisoners formerly convicted.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for the period of ten (10) years in banishment from 1st February, 1854.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Ten men, who comprised the gang in this dacoity, were tried and convicted by the sessions judge in February last, and their conviction upheld by this Court on 29th August last. They had confessed before the police and the magistrate and produced their respective share of the property. The confessions of those prisoners are highly confirmatory of the statements of the present witnesses; as to the assemblage of the gang at the house of the two prisoners now appealing and of their general complicity in the crime. The partial admissions of the prisoner, No. 17, to the possession of the stolen property found in his house, and the inability of the prisoner No. 16 to

establish the *alibi* set up by him, fully justify the presumption of guilt deduced by the sessions judge from the circumstances detailed by him. We see no reason to doubt the fact that the prisoners organised the dacoity and the conviction is justifiable. The appeal must therefore be rejected.

1854.
December 1.
Case of SHEIKH TUMEEZOODDEEN and another.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

BROJOKISHORE MYTEE AND GOVERNMENT

versus

LUKHUN DOSS (No. 7,) SEBUKRAM DOSS (No. 8,) KHEDEYRAM DOSS (No. 9,) AND PARBUTTEE SEET CHOWKEEDAR (No. 10.)

Midnapore.

1854.
December 2.
Case of LUKHUN DOSS and others.

CRIME CHARGED.—1st count, wilful murder of the prosecutor's father, Sreebullub Mytee; 2nd count, privity to the above murder.

Committing Officer.—Moulvee Wuheedun Nubbee, deputy magistrate exercising powers of a magistrate at Nugwa.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 11th September, 1854.

Prisoners charged with wilful murder acquitted, there being no proof of the *corpus delicti*. When the crime which the sessions judge finds established amounts to wilful murder, he is bound by the law to refer the case of the prisoners, whether principals or accessaries, to the Sudder Nizamut for sentence.

Remarks by the sessions judge.—The murder with which the prisoners are charged occurred so far back as the 30th April, 1854. A month subsequently, on the night of the 30th May, the darogah of the Nugwa thannah learnt, probably from an informer, but that does not clearly appear in the proceedings, that the *burwa* of the village of Nimuck Bar, Sreebullub Mytee, deceased, was missing; he instituted inquiries, but could gather no satisfactory tidings of him: his wife and son at first stated he had gone to Calcutta, others that he had been made away with by the villagers. The deputy magistrate on receiving the darogah's report proceeded himself to the spot and succeeded in gaining a clue, which has terminated in this trial. It appears that the deputy magistrate, when at Nimuck Bar, learnt that the witness, Narain Dass, No. 14, a brother of the deceased, who was acquainted with the circumstances of his brother's murder had been removed from the village and kept concealed in order to prevent his giving information. After a diligent search, the police succeeded in tracing and bringing him to the deputy magistrate. On the 11th July, when his deposition was taken, he told the same story as had been taught to the other relatives of deceased, viz., that Sreebullub had gone to Calcutta, and had not returned. On the 19th July, however, he deposed that on

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December 8.

Case of LUKHUN DOSS and others.

Sunday night, the 30th April, at about 12 o'clock, the prisoners, Nos. 7, 8, 9 and 10, together with many others, whose names he specified, waylaid his brother, and when he was about to enter his house, seized him, stuffed straw into his mouth to prevent his making a noise, carried him away to a *nullah*, a short distance off, where they took his life in some way or other and then threw his body into the water. The parties named by the witness were immediately arrested, when the four prisoners, who are not the principals, confessed. According to the evidence of the prosecutor and his mother, Ahillea, the witness, No. 16, and indeed of most of the witnesses, the village of Nimuck Bar, is a nest of salt smugglers; the deceased Sreebullub was *burwa* of the village, likewise an informer, and in the latter capacity had been successful in causing some seizures of illicit salt to be made by the Government salt officers. He had thus incurred the hatred of his neighbours, who had more than once threatened to take their revenge and so far back as the year 1845, he, Sreebullub, sought the interference of the magistrate to protect him from the violence of which he was in dread.

On the Saturday, previous to his death, Sreebullub had put the darogah on a clue to make a seizure of salt. The smugglers, however, having got intelligence evaded the trap that was laid for them, and they then seemed to have entered into a confederacy to rid themselves of one by whose presence and interference their illicit trade and even their liberty was jeopardized.

The prisoners, in their confessions, state that on the night of the murder, the 30th April, they and others, whose names they specify, (who appear to have been the prime movers in the matter, but against whom the proof was not sufficient to justify commitment) met in conclave and decided on taking the life of the deceased; that accordingly they concealed themselves in the neighbourhood of Sreebullub's house, and when he was returning to his house at night, they seized him and carried him off. They all deny that they had any hand in the actual murder, but throw the responsibility on others not committed and on each other. The prisoners, Nos. 7, 8 and 9, pointed out to the deputy magistrate the spot, where they assembled and watched for the deceased and the prisoner No. 10, Parbuttee Seet, also pointed out the road by which they carried the body to the *khal* and where it was thrown into the water. After the lapse of so long a time there could be no *corpus delicti*. The probability is, the body was carried away by the tide or devoured by alligators which abound in the *khal*: the death of Sreebullub cannot, I think, be doubted, he has never been seen or heard of since the 30th April, and it may safely be presumed that he was made away with in the manner indicated in the confessions, which are corroborated by strong circumstantial evidence.

The prisoners plead *not guilty* in this court and set up *alibis*

1854.

December 27.

Case of Lukhun Dass and others.

in their defence, which they fail to establish. They allege that the deputy magistrate extorted their confessions by threats and ill-usage, but their accusations are unsupported by any proof, and the high reputation of the deputy magistrate is entirely opposed to the supposition that any improper means were used to influence their confessions. The confessions comprise the entire evidence against the prisoners, Nos. 7, 8, and 9, and assuming them to be trustworthy, which there is no reason whatever to doubt, their complicity in the murder as accessaries before the fact is established. The prisoner, No. 10, is more deeply implicated; according to his confessions, he was not only an accessary before the fact, but it is also in evidence that he was most active after the murder in removing all traces of it and preventing intelligence of it reaching the proper authorities, though he himself was the chowkeedar and bound by the nature of his office to make known that which he did his best to conceal.

The assessors declare the prisoners, Lukhun Dass, No. 7, Sewokeram Dass, No. 8, and Khedeyram Dass, No. 9, guilty as accessaries before the crime with which they are charged, and Parbuttee Seet, No. 10, guilty as an accessary both before and after it. I concur in this finding, and recommend that prisoners, Nos. 7, 8 and 9, be sentenced to 10 years' imprisonment with labor in irons, and prisoner, No. 10, whose crime is of a graver character than that of the others to 14 years' imprisonment with labor in irons, in banishment.

The magistrate has been directed to make an investigation into the conduct of the village authorities, responsible for due intimation of the murder being given to the police authorities, and to act accordingly.

Having thus complied with the instructions of the Court, as communicated in their letter, I beg to offer the following remarks in explanation of the causes that induced me to pass sentence without a reference to the Superior Court.

Under Section 6, Clause 1, Regulation III. of 1803, the sessions courts are required to transmit to the Nizamut Adawlut all trials in which the prisoner or prisoners are convicted and liable to a sentence of *perpetual imprisonment* or *death*, and Clause 2 of the same law would seem to imply that an accomplice or accessary in murder may be convicted and sentenced by the sessions court; precedents also of the Sudder Court would appear to support the view that in cases where the principals have been convicted of murder, reference in respect to accomplices is unnecessary.

In the present instance neither an irrevocable sentence, nor one of perpetual imprisonment was called for, and I therefore considered I was exercising a power conformed by law, and supported by practice, in passing such a sentence as the guilt of the parties seemed to me to demand.

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December 2.

Case of Lukhun Doss and others.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The sessions judge states that the confessions comprise the entire evidence against the prisoners, Nos. 7, 8 and 9; assuming them to be trustworthy, which there is no reason whatever to doubt, their complicity in the murder as accessaries before the fact is established.

We have carefully read these confessions, and we find nothing in them upon which a conviction of the prisoners would be justified. There is no proof of a murder having been committed, not one of the witnesses on the record deposes to have seen the corpse of Sreebullub, who, it is alleged, has been murdered.

None of the above prisoners state more than that he was carried off to the southward, though questioned by the deputy magistrate, some two and half months after the occurrence is said to have taken place, about a *corpse* which so far as the record goes, no one saw.

The prisoner No. 10, before the deputy magistrate, said that some persons, among whom he named the other prisoners, carried away Sreebullub, he followed him for a short distance, and then returned home. Being asked where the deceased *was murdered*, he said he knew nothing about *that*. The deputy magistrate appears to have assumed as a fact proved that Sreebullub was killed, but as already shewn, nothing on the record warrants that assumption. The darogah reports that the prisoner pointed out where the *corpse* was thrown by him, such a report after the lapse of two and a half months, in the face of the confession which is made the ground of conviction can be of no force, more especially as the fact of a death having occurred is not proved by any sufficient evidence. For these reasons, we acquit the prisoners.

This case was called for on review of the monthly statement No. 6, when the remark marginally* noted was made and the judge, in furtherance of the orders he received, forwarded the trial to this Court with his letter No. 126, of the 7th November.

In disposing of the trial the Court find it necessary to make the following observation upon this letter.

* The Court, finding that it was not within your competency to dispose of the case of Lukhun Doss and others, Nos. 7 to 10, of statement No. 6, quash the conviction of being accessaries to murder, and sentence passed by you upon the prisoners, and direct that you refer the trial in the regular course.

The sessions judge relies on Clause 2, Section 6, Regulation LIII. of 1803, as seeming to imply that an accomplice or accessary in murder may be convicted and sentenced by the sessions court, and he alludes to precedents of the Sudder Court which would appear to support his view, that where the principals have

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Case of LUKHUN DOSS and others.

been convicted of murder, reference in respect to accomplices is unnecessary.

These precedents should have been indicated, but they are not, and the Court are aware of none.

The portion of the law, Clause 2, upon which the judge seems to rely, applies to cases not *necessarily* referable to this Court for final sentence, namely, to cases in which the sessions judge deeming a reference as to principals necessary, is, though competent to pass sentence on accomplices, directed to await confirmation of his order upon them, as well as upon the principal.

In a case of murder however in which a reference for final sentence is always necessary, no discretion is left with the sessions judge to sentence prisoners as he did in concurrence with the assessors in this case.

As the judge had no jurisdiction in the matter, any orders by him disposing of the case are of no force, and would of necessity be quashed, if the release of the prisoners did not render further notice uncalled-for on the present occasion. In conclusion the Court remark that they are unable to discover any law or practice which would justify the sentence of ten years and fourteen years passed upon the prisoners, severally, by the sessions judge, if even the case was one, as he holds it to have been, coming within his discretionary power; for, by Clause 7, Section 2, Regulation LIII. 1803. he is incompetent to pass a sentence exceeding seven years, except in cases specifically provided for by the law.

PRESENT:

H. T. RAIKES AND B. J. COLVIN, Esqs., *Judges.*

RAMJOY CHUNG AND GOVERNMENT

versus

SHEIKH TOOFANEE.

Rajshahye.

1854.

December 7.

Case of SHEIKH TOOFANEE.

The prisoner's appeal was rejected, his guilt being fully proved.

CRIME CHARGED.—Burglary in the house of Ramjoy Chung, the prosecutor, attended with the wounding of the said prosecutor.

CRIME ESTABLISHED.—Burglariously entering the house of the prosecutor with intent to steal and wounding Ramjoy Chung.

Committing Officer.—Mr. S. F. Davis, joint-magistrate of Serajgunge.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 18th July, 1854.

Remarks by the sessions judge.—A simple case of burglary, or rather burglarious entry, by an old offender, who being seized by the owner of the house struck him on the chest and forehead with a *pachun* or weeding hoe, used on the occasion to make the *seend* or hole, by which the entry was effected. The case was tried with the assistance of a jury, who were informed the case was entirely one of fact, and all they had to decide was, if the evidence was credible or not. They then found a verdict of burglariously entering the prosecutor's house with intent to steal, and wounding Ramjoy Chung, deceased (who died of a snake-bite before the trial came on) and concurring in the finding, I have sentenced him to five years' imprisonment with labor and irons. He was only released in June, 1853, from the Beauleah jail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) The prisoner has, in his defence, allowed that he was seized by the prosecutor in his house, but that he was there with no criminal intent. There is no proof of this however, while the evidence for the prosecution makes it clear that he burglariously entered the premises, and wounded the prosecutor.

We reject the appeal.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

HEAT MAHOMED (No. 42, APPELLANT) BRIJOMOHUN BYRAGEE (No. 43, APPELLANT,) MEEROO MUNDUL* (No. 44,) OOZEERAH KAUN* (No. 45,) RUHMUT KAUN* (No. 46.)

Rungpore.

1854.

December 8.

Case of HEAT MAHOMED & others.

A prisoner charged with different offences some of which come, whilst the others do not come, under Act XXIV. 1843 should be tried before a law officer or by Reg. VI. 1832.

CRIME CHARGED.—1st count, dacoity attended with murder of Oochub Shah, in the house of the said Oochub Shah; 2nd count, burglary with murder of Oochub Shah; 3rd count, having in their possession property acquired by dacoity with murder, knowing it to have been so obtained; 4th count, having in their possession property acquired by burglary with murder, knowing the same to have been so obtained, value of property plundered Rs. 69-13.

CRIME ESTABLISHED.—Having in their possession property acquired by dacoity with murder, knowing it to have been so obtained.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 27th July, 1854.

Remarks by the officiating sessions judge.—On the night of the 30th January last, Goodra, witness No. 1, servant of the deceased, Oochub Shah, was roused, while sleeping in the east hut of the deceased's *bari*, by the groans of his master, who slept in the west hut; rushing outside the inclosure, he called to the neighbours to come quick, as thieves or something had attacked his master; returning inside again he saw five or six persons issue from the east hut by the door and from behind and run away, and on the neighbours coming and a light being brought, Oochub Shah was found lying close to the door on the floor in a speechless state, but after a little time, he contrived to make them understand by signs that some person or persons had sat on his chest and legs, while others grasped his throat, on which marks of violence were seen, a hole was also found dug through the wall of the house, a chest broken open and a number of articles carried off. In the morning, on witness No. 1, proceeding to the darogah, who was in the mofussil about five miles off, he found with him, witness No. 4, Chytun chowkeedar, who, with witness No. 5, another chowkeedar, had

* Acquitted by the sessions judge.

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December 8.

Case of HEAT MAHOMED & others.

brought to the darogah, prisoner No. 42, Heat Mahomed, having apprehended him about three or four that morning, their suspicions being first aroused by the prisoner, stranger to them, going about with a bundle at such an hour, and strengthened by his telling them that he had come to search for an escaped convict, although he had neither badge nor *perwannah*. The darogah desired witness No. 1, to examine the prisoner's bundle and on doing so, among many other articles, there were seven which witness recognized, as belonging to his master and at least two of these (silk *sarees*) admitted of identification. The prisoner stated that prisoner No. 43, Brijo Byragee, who with prisoners Nos. 45, 46, and others, had met in No. 45's house and gone out to rob, leaving him at home, gave him these articles on his return, the darogah immediately dispatched some police officers with prisoner No. 42, witness No. 1, and others, to search the houses of Nos. 45 and 46, &c. On the way, while passing a *haut* towards evening, prisoner No. 42 pointed out prisoner No. 43, walking at some distance, he was pursued and apprehended by witness No. 7, and on him was found a bundle, containing seven articles claimed as the property of Oochub Shah, two of which silver ornaments were identified as such by the maker, among other witnesses. The prisoner alleged that Heat Mahomed, No. 42, had given him these things. The darogah took the deposition of Oochub Shah, but it is not satisfactorily attested, and besides it does not appear from the evidence that Oochub Shah was ever capable after the occurrence of articulating intelligibly; however no names are mentioned, it is merely stated that deponent hearing a noise, opened the door, when some person seized him by the throat and threw him back and then another sat on his chest, while others plundered the house. On the 5th February, six days after the occurrence, Oochub Shah died and his body was sent in for examination.

On the trial, the above facts were clearly established. The medical officer deposed that eleven of deceased's ribs were broken and his wind-pipe crushed, while his chest and throat on dissection showed the effects of severe contusions and on the latter were distinct nail marks, also that in his opinion death was caused by these injuries.

Prisoner, No. 42, who had been a jail burkuudaz at Bograh, where he resided, told an improbable story in his defence, giving no satisfactory reason for his being found forty miles from home, and alleging that prisoner No. 43 had given him the articles, saying they had been acquired in an old burglary and that he had gone to the chowkeedars to give them up, when he was apprehended and taken to the darogah. This story agrees in the main point with his answer to the joint-magistrate, but varies considerably in the details and is utterly unsupported by the witnesses called by him.

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Prisoner No. 43 had before undergone eight years' imprisonment for a daring burglary committed in 1844; in his reply, he said the property on him had been given to him by prisoner No. 42, but he appeared to care little about making a defence and declined to have the witnesses named by him, examined. Before the joint-magistrate, he stated, the prisoner No. 42, or some one on the prosecutor's side, had caused the property to be found with him when apprehended. I convicted both prisoners on the 3rd charge, I considered the evidence of witness No. 1, as to the number of persons concerned and the state in which deceased was found, to bring the crime under the head of dacoity or robbery by open violence. The evidence would, I think, have warranted the conviction of prisoner No. 42, on the first charge seized as he was with plundered property on him making his escape so soon after the occurrence, but although he denies his mofussil confession (which is not well attested) I believe that he did make it, and that as stated therein, he was not actually engaged in the dacoity.

I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons, No. 42, for twelve (12) years, and No. 43, for fourteen (14) years and to two (2) years' additional imprisonment in lieu of corporal punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B J. Colvin.) The Court remark that although the prisoners appealed on the 19th and 21st August, their petitions were not forwarded by* the sessions judge till the 19th October. He is directed to explain the cause of this delay.

As there were other charges besides dacoity, the sessions judge should not have tried the case under Act XXIV. of 1843, but as he has convicted on the 3rd charge, his proceedings are legal by the conclusion he came to, which they would not have been had he convicted on the 2nd or 4th charge.

The Court do not however find the evidence of open violence, which is essential to dacoity by Section 3, Regulation LIII. 1803. The house was burglariously entered, and not attacked by open violence. They convict accordingly of the 4th count, rejecting the prisoner's appeals, the evidence for the prosecution being conclusive of their guilt.

* From the officiating sessions judge of Rungpore to the register of the Nizamut Adawlut No. 106, dated the 27th December 1854.

" With reference to the Court's remarks on the trial of Heat Mahomed, forwarded with your letter of the 8th instant, I have the honor to state that the delay in forwarding the prisoner's petitions was owing to the number of nuthees which had to be copied, in consequence of appeals presented in August (9) or of cases referred (3) and also to the fact that in the 24 days which elapsed between the return of the Amlah from the Bograh sessions and the close of the civil courts, they had a great deal of work to do and a number of sessions trial came on after the courts were closed.

PRESENT:

B. J. COLVIN, ESQ., *Judge*.

GOVERNMENT

versus

BHOYRUB BAGDY.

Hooghly.

1854.

December 9.

Case of BHOYRUB BAGDY.

The prisoner was sentenced to transportation for life under Act XXIV. 1843.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.— Mr. E Jackson, commissioner for the suppression of dacoity.

Tried before Mr H. F. James, additional sessions judge of Hooghly, on the 22nd November, 1854.

Remarks by the additional sessions judge.—The prisoner was apprehended on the 30th March, 1854, immediately after committing a dacoity in the house of one Joynarain Jogee, in the village of Husseinpore in Burdwan. The chowkeedars of the village followed the dacoit and after bringing him to the ground by a blow of a *lattee*, captured the prisoner Bhoyrub Bagdy, with a portion of the plundered property on his person. He was tried and convicted of the dacoity and sentenced by the officiating additional sessions judge to twelve years' imprisonment, with labor in irons on the 12th May last, but under the orders of Government, No. 1337, dated the 2nd June last, he was transferred to the dacoity commissioner. Before the deputy magistrate, who is attached to that officer's establishment, he confessed to having been engaged in some seventeen dacoities in the zillahs of Hooghly and Burdwan and he was committed for trial to this court on the charge of having belonged to a gang of dacoits, and the proceedings have been held with reference to Act XXIV. of 1843. His confessions before the deputy magistrate for the suppression of dacoity have been formally attested by the depositions of the witnesses, who heard them, they are full and detail some minor occurrences which took place at the time of the dacoities. In my court he confesses his guilt and acknowledges that he took a share in the different dacoities. Of some of the dacoities mentioned by him no trace can be found in the magistrate's court of the zillahs where they took place, but on inquiries on the point being made in the mofussil, it has been proved that the dacoities were really committed. These remarks apply to the dacoities Nos. 7, 8, 9, 10, 13, 15, 16 and 17, mentioned in the prisoner's confession, no intelligence of them ever reached the ears of the police, but there can be no doubt of their having been committed, the sufferers in whose houses they occurred having deposed to the fact. The records of the other cases have also been compared with the detailed confession of the prisoner and they tally in all

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Case of BHOYRUB BAGDY.

the essential matter of the several dacoities. In dacoities Nos. 2, 3 and 5, there are many points corresponding exactly with those mentioned by the prisoner in his confession, which it is unnecessary to detail as the prisoner pleads guilty.*

I therefore convict the prisoner of having belonged to a gang of dacoits and I recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I convict the prisoner, Bhoyrub Bagdy, of having belonged to a gang of dacoits on his own full confession and plea of guilty. I sentence him therefore to transportation beyond sea with hard labor and irons for life.

PRESENT:

B. J. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

DAMOO BAGDY.

Hooghly.

1854.

December 9.

Case of DAMOO BAGDY.

The prisoner was sentenced to transportation for life under Act XXIV. 1843.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekor Roy, deputy magistrate under the commissioner for the suppression of dacoity.

Tried before Mr. H. F. James, additional sessions judge, on the 16th November, 1854.

Remarks by the additional sessions judge.—From the papers of the case, it appears that the prisoner in this case, Damoo Bagdy, was named by some approvers on the establishment of the commissioner for the suppression of dacoity, as having participated in several dacoities. His residence was mentioned and accordingly a *perwannah*, dated 18th July, 1854, was issued to the darogah of Neihattee to apprehend him. He was arrested and reached the office of the commissioner on the 20th idem. On the following day, he confessed to having been engaged in several dacoities and acknowledged having belonged to a gang of dacoits for some eleven or twelve years. On the 24th idem, he detailed eleven dacoities in which he had been engaged at full length, mentioning the names of his accomplices and detailing many of the incidents and occurrences of each of the dacoities, stating the amount of property plundered, the manner of dividing the spoil and in some cases explaining the amount received by the headmen and the method of their disposing of the same.

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The commissioner, on the 28th October last, committed the prisoner for trial to this court on the charge of having belonged to a gang of dacoits. To this charge, the prisoner pleads guilty before me, and acknowledges his having participated in the commission of several dacoities and having shared the plunder obtained. He declines making any defence or calling any witnesses. The evidence of Leilab Mussulman was taken by me on oath, and he deposes to the prisoner having assisted him in three dacoities and to his being a well known dacoit for many years. The testimony of this man is borne out in some of the minor details, by a reference to the original record of the case obtained from the deputy magistrate of Baraset, and by subsequent inquiries held by the officers of the establishment of the commissioner for the suppression of dacoity. The confession of the approver was taken on December 1st, 1853, and it was continued for some days and he mentioned at that time the name of Damoo Bagdy, as an accomplice in two dacoities committed in the village of Jagoolee in Baraset on the same night, one in the house of a barber and one in the house of a *kaith*. The dacoity in the house of the *kaith* was never reported to the police at the time it occurred, but the fact of its having taken place was corroborated by a subsequent inquiry into the matter, and the circumstance of the dacoits on leaving the village falling in with a marriage procession, a fact detailed by the approver in his confession was also confirmed on inquiry by the police in August last. The confession of the prisoner before the commissioner for the suppression of dacoity was duly attested and sworn to before me by two individuals who were present.

Under these circumstances, I convict the prisoner of having belonged to a gang of dacoits, and I recommend that he be sentenced to be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I convict the prisoner, Damoo Bagdy, of having belonged to a gang of dacoits on his own full confession and plea of guilty, and sentence him to transportation beyond sea with hard labor and irons for life.

PRESENT:

SIR R. BARLOW, BART., *Judge*.
J. H. PATTON, ESQ., *Officiating Judge*.

GOVERNMENT AND LOOMRAI KHASSEEAH
versus
OOJAT KHASSEEAH (No. 1,) SEMBOO KHASSEEAH (No. 2,) JORAH KHASSEEAH (No. 3,) OOARH KHASSEEAH (No. 4,) OOMOOT KHASSEEAH (No. 5,) SAN SINGH KHASSEEAH (No. 6,) OOKOOT KHASSEEAH (No. 7,) JATTAH KHASSEEAH (No. 8,) AND PHANBUR KHASSEEAH (No. 9.)

Assam.

1854.

December 11.

Case of OOJAT KHASSEEAH and others.

The prisoners, who are natives of the Kossya hills, were convicted of the wilful murder of a man, supposed by them to be a sorcerer. Two of them were sentenced to death, five to transportation for life, and one to seven years' imprisonment. The Kossyas having been twenty years under British Rule, there is no reason why they should be exempted from the well known penalties prescribed by the law against persons guilty of heinous crimes.

CRIME CHARGED.—1st count, Nos. 1, 2, 3, 4, 5, 6 and 7, murder of Maikah Khasseeah; 2nd count, No. 8, accessary before the fact in the above crime of murder; 3rd count, No. 9, privity in the above crime of murder.

Committing Officer.—Mr. C. K. Hudson, officiating principal assistant commissioner and magistrate of Cosseah and Jynteah Hills.

Tried before Brevet Major John Butler, officiating deputy commissioner of Assam, on the 25th October, 1854.

Remarks by the officiating deputy commissioner.—The prosecutor, Loomrai Khasseeah, states as follows.

It is now about a year and two or three months, that in the village of Motho Ponjee at night, that my *bae petree alias* step-father, Maikah Khasseeah, was murdered by Oojat Khasseeah, Semboo Khasseeah and others, by a beating with sticks, and I now therefore complain against them. I do not know why they murdered Maikah, I was not present when he was murdered, but I heard from Sinjiri Meekir and Oorah Meekir, that those two abovementioned prisoners had murdered Maikah. Besides these two prisoners, the other prisoners were aiders and abettors in the murder of Maikah, at least I heard they were from Oojat and Semboo, prisoners, I did not go to the place of the murder on the night that it was committed. From my place of residence, the murder was committed at about three hundred paces distant. I was at home on the night of the murder. On that night the deceased, Maikah, went from my house to the village abovenamed, to house the two Meekirs, Sinjiri and Oorah, in an empty house of my wife's, he was in that house and it was there that the murder was committed. I being alarmed, did not go to the place where the deed was perpetrated. The deceased, Maikah, my *bae petree alias* step-father, on the part of Hajar Singh Rajah was to have collected some cess from the abovenamed Poonjee,

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on which Oojat and Semboo, prisoners, now present on the part of Bur Singh Rajah, attempted to realize it, but my *bae petree*, step-father, objected and forbad them, it was on this account that they bore enmity towards him, all this Oorah and Sinjiri Meekirs are aware of, I do not know what became of the corpse of Maikah.

No. 1, Oossaie Khasseeah, 1st witness for prosecution.—I am acquainted with Loomrai Khasseeah, the prosecutor, and Oojat Khasseeah, Semboo Khasseeah and other prisoners, but I am not connected with any of them. It is now about fourteen or fifteen months, I do not know the day or the date, about one *prohur* of the night, the nights were for a short time moonlight about that time, from near my house, I saw Oojat Khasseeah (No. 1,) Semboo Khasseeah (No. 2,) San Singh Khasseeah (No. 3,) Oorah Khasseeah (No. 4,) Ookoot Khasseeah (No. 5,) Oomoot Khasseeah (No. 6,) Jorah Khassseeah (No. 7,) the present prisoners, with sticks in each of their hands two or three *haths* long, and about eight or nine fingers in circumference, and they, with those sticks murdered a person by name Maikah Khasseeah. This murder was committed in the north-east corner of Phapan Khasseeanee's house, and on the east side of my house, this I saw from nine or ten paces distant, this I know.

Near my house, there was a thin bamboo fence, the stakes of which were planted far apart from each other, and I saw the murder committed from between the openings. I do not know whether any other person at that time saw the deed perpetrated. On the abovementioned prisoners striking the deceased, Maikah, with the stick, he fell to the ground, after which from among the prisoners, I saw Oorah Khasseeah, San Singh Khasseeah, Ookoot Khasseeah, Jorah Khasseeah and Oomoot Khasseeah, these five individuals, take the corpse of the deceased, Maikah, and pulling it along towards the west side of Motho Poonjee, and I clearly saw the prisoners with their sticks murder the deceased, Maikah.

I heard from Oojat Khasseeah and Semboo Khasseeah, prisoners, that Maikah Khasseeah, by witchcraft destroyed people, and that it was on that account they had murdered him, and this I also know that Oojat and Semboo, prisoners, prevented or forbid Maikah Khasseeah, from realizing a cess on the part of Bur Singh Rajah from the village of Motho Poonjee, and on account of the dispute a quarrel arose between them, whether it was on that account or from some other cause that they murdered Maikah Khasseeah I do not know: besides this I do not know whether there was any ill-will between the prisoners and Maikah Khasseeah, deceased, the place where the murder was committed is within the limits of Motho Poonjee.

All the prisoners were collected together, and in the confusion that took place, I cannot exactly specify who it was that first

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struck the deceased, and I cannot distinctly state on what part of the body each prisoner struck the deceased, Maikah.

Question.—In your deposition in the foujdary, you stated first that all the prisoners with sticks in their hands murdered the deceased, Maikah, and afterwards that among the prisoners only three of them had sticks in their hands, viz., Oojat Khasseeah, Semboo Khasseeah and San Singh Khasseeah, and that in the hands of the other prisoners there was no stick, you are now questioned as to which of these statements is the true one?

Answer.—What I have now stated is correct and true.

Question.—In your first deposition, you stated that Maikah Khasseeah was murdered by the prisoners outside of his house, but now you stated that he was murdered outside of the house of Phapan Khasseeanee, you are now questioned as to the reason for these conflictory statements?

Answer.—The prosecutor, Loomrai, is the son of Maikah, deceased, and Phapan Khasseeanee is the wife of Loomrai, that house belongs to Loomrai, the prosecutor, and what I have now stated is correct.

The deceased Maikah had attained about half the age of the ordinary life of man.

Oodhon Khasseeah, 2nd witness for prosecution.—I have nothing in common to do with either the prosecutor or prisoners, but I know them.

From this time, about fourteen or fifteen months past, about one *prohur* or ten *dunds* in the night I and Yangra* and Aheen Khasseeah of the same Poonjee, went to Kajongeree, Sootion Khasseeanee's house and went to sleep; a short time after which, Aheen awoke me from my sleep, and said, there is some noise outside go and see, and getting up from my sleep, I remained in a room in the house, the *tatee* of that house was of bamboo and open, between which openings I looked, and saw Oojat Khasseeah, Semboo Khasseeah, Joorah Khasseeah, Oorah Khasseeah, Ookoot Khasseeah and San Singh Khasseeah, the present prisoners, near Phapan Khasseeanee's house, with wooden clubs in each of their hands, beating Maikah Khasseeah, who was lying on the ground, and it appeared to me that from the beating inflicted by those prisoners that Maikah Khasseeah was dead. The clubs with which these prisoners beat the deceased, Maikah, were about three or four *haths* long, and about ten or twelve fingers in circumference, and in each prisoner's hand there was a weapon of this description; I saw the deed committed from about thirty-five to thirty-six *haths* distant but from the blow of which prisoner, Maikah, died, I cannot say, neither can I say who among the prisoners beat him first. At that time it was starry, the moon had gone down: by the light of the stars I saw the deed committed. The house of Kajongeree Khasseeanee, in which I slept, towards the south-east side,

* Probably Meeangbah.

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is Phapan Khasseeanee's house, and towards the south-west side of that house, the murder was committed, this I saw from about thirty-five or thirty-six *haths* distant. I am a Khasseeah and the different directions mentioned, I have said from supposition of its being correct, and according as we in general suppose the different directions to be. According as I stated before, the son of Semboo prisoner, Neeangha Khasseeah, saw the deed committed at the same time. After seeing the murder, from fear I went to sleep, what became of the corpse of Maikah, I cannot say. Afterwards the witness stated that the prisoners, Oojat and Semboo, went to his house the following day and desired him not to make known the occurrence to any one, and they also said they had killed Maikah, and they forbid me to make it known, and also forbid all the people of that Poonjee to make known the circumstance. I do not know why they killed the deceased, Maikah, nor do I know whether they had any ill-will towards him. I saw the deed committed by the light of the stars. The deceased, Maikah, was a middle-aged man and robust.

Question.—In your former deposition, you said that Kajongeree Khasseeanee awoke you from your sleep, and that you saw the perpetration of the deed, and you now state that Aheen Khasseeah awoke you from your sleep.

Answer.—I stated the same before.

Question by the prisoner, Ookoot.—Have you a wife or not?

Answer.—I have.

Question.—Having a wife of your own, what is the reason for your having gone to the house of another woman in another place.

Answer.—I went at my own will and pleasure, and often go and sleep at the houses of others, and that night I went in the same way to Kajongeree's house to sleep.

Neeangha Khasseeah, 3rd witness for prosecution, son of Semboo.—I know the prosecutor and prisoners, and I am the son of Semboo Khasseeah, but I am not in any way connected with any of the others.

About fourteen or fifteen months from this day, about one *prohur* of the night, I went to Kajongeree Khasseeanee's house of the same Poonjee, and went to sleep. In that house, Aheen Khasseeah, Oodhun Khasseeah, Sootimul Khasseeanee and Kojongeree Khasseeanee, were sleeping, a little less two *prohurs* of the night, about that time, Aheen Khasseeah awoke me from my sleep, and hearing a great noise outside, I went to the verandah of the house, and from the centre of it, I saw through the crevices of the *tatee* that Maikah Khasseeah, the father of prosecutor, Loomrai, was laying on the ground and near him Oojat Khasseeah, and my father Semboo Khasseeah, Jorah Khasseeah, Oomoot Khasseeah, Ookoot Khasseeah, Oorah Khasseeah, and San Singh Khasseeah, each standing with a *lattee* or club in his

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hand, from that I thought that those persons had murdered Maikah Khasseeah with their *lattees* or clubs, but whether Maikah was dead or not, I could not make out. From the place where I stated I was, from the crevices of the *tatee* to the south side, about thirty-five or thirty-six *haths* distant, I saw Phapan Khasseeance, the wife of Loomrai, in the verandah of her house, and the place, where the murder was committed, was about the same distance from the house, seeing the deed committed, from fear I went to sleep. Along with me Aheen Khasseeah and Oodhun Khasseeah saw the circumstances stated.

One or two days after the murder was committed, my father Semboo Khasseeah, and Oojat Khasseeah, prisoners, desired me and the other people of the Poonjee not to make the circumstance known. The clubs that I saw in the hands of the prisoners were about three *haths* long, and about nine or ten fingers in circumference.

When the deed was committed, there was a little moonlight, after the moon has set, it was starry, and I saw the circumstances stated from a distance.

Question.—Why did the prisoners surround the deceased Maikah?

Answer.—I do not know why the prisoners beat Maikah, deceased.

The prisoners had murdered the deceased, Maikah, and they forbid me to make it known, I do not know whether the prisoners had any ill-will towards the deceased.

Question.—You stated before in the foujdary that when Maikah fell to the ground, the prisoners with their clubs were standing near him and from what you heard the prisoners talking, it appeared they had murdered the deceased, why do you now state differently.

Answer.—What I have now stated, I also stated before. I did not hear one prisoner say to another any thing of what you say.

I went to sleep at Kajongeree Khasseeance's house at my own will and pleasure, Sootimul Khasseeanee at the time had small-pox, and Aheen Khasseeah went to attend to her. What became of the corpse of Maikah, deceased, I do not know.

Oohang Khasseeah, 4th witness for prosecution.—I am acquainted with the prisoners, but I am in no way connected with them. About fourteen or fifteen months ago from this date, about one *prohur* of the night, hearing a noise, I got out of my house, and from the verandah of my house, through the crevices of the bamboo *tatee,* about eleven or twelve *haths,* from my house to the east and to the west of Phapan Khasseeanee's house, I saw Semboo Khasseeah, now present, and Oojat Khasseeah, Oorah Khasseeah, Oomoot Khasseeah, Ookoot Khasseeah

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and San Singh Khasseeah, these seven* persons with clubs in each of their hands, about three or four feet long, and about ten or twelve fingers in circumference, and with those clubs, they were beating Maikah Khasseeah; from the beating Maikah fell to the ground, and I then thought that from the beating he had died. After this, those seven persons I saw taking the deceased's body and pulling it along towards the west side of Motho Poonjee.

* Only six persons are named.

On the night of the murder the moon had set, but the night was starry, and I saw the circumstance stated by the light of the stars, I do not know by whom the deceased, Maikah, was killed, and who gave the first blow, and by whose blow he died.

I do not know the reason for their murdering Maikah, the deceased, and I am not aware whether any of the persons had any ill-will towards the deceased, Maikah, or not; and what was done with the corpse, I do not know.

Question.—You stated in your depositions before that Oojat and Semboo, prisoners, with two blows of their sticks killed Maikah, the deceased, and now you state that the abovenamed seven persons killed Maikah, what is the reason of this discrepancy?

Answer.—What I have said to-day, I stated before.

Question.—You stated in your former depositions that you saw the deed committed from the west end of your house, and now you state that to the east of your house and towards the west of Phapan Khasseeanee's house the deed was committed. What is the cause of this?

Answer.—I do not know exactly which is the north or south or other quarters, but from the verandah of my house towards the west side of Phapan Khasseeanee's house, I saw the deed committed.

When the thannah darogah went to inquire about the case, the abovenamed persons pointed out the bones of the deceased, Maikah.

Question.—In your former deposition, you stated that you saw the circumstances mentioned from twenty or twenty-five paces distant, and now you say eleven or twelve *haths* distant.

Answer.—What I have now stated, I stated before.

I saw the deed committed, but whether any one else saw it at the same time, I do not know.

Question.—In your former depositions you stated that the prisoners forbid Maikah to collect a cess on account of Bur Singh Rajah, and that it was on that account they had murdered him; but now you deny it. What is the cause of this?

Answer.—It was on that account that the deed was per-

petrated, and this I stated before, but I forgot it, and therefore it was not mentioned.

Reeput Khasseeah, 5th witness for prosecution.—I recognize the prisoners, but am in no way connected with them.

About fourteen or fifteen months ago from this date, about one *prohur* of the night, hearing a noise, I got out of my house, and standing near it through the crevices of a bamboo *tatee*, I saw Semboo, prisoner, now present and Oojat, Ookoot, Oorah, Oomoot, San Singh, and Jorah Khasseeah, these seven persons with clubs in each of their hands two or three *haths* long, and ten or twelve fingers in circumference, and Loomrai's father, Maikah Khasseeah, was lying on the ground. Afterwards those seven persons dragged Maikah along towards the west of Mothe Poonjee, what they did with Maikah afterwards, I do not know.

Question.—You stated in your former depositions that you saw Oojat Khasseeah and Semboo Khasseeah beating Maikah, the deceased, with sticks, but now you state differently, which of your statements is the correct one?

Answer. - It is such a long time since the circumstance took place that from forgetfulness it was not mentioned, but now I recollect that what I stated of the two prisoners having killed the deceased is true.

I saw the deed committed from about twenty-five or twenty-six *haths* distant. It was committed in front of the house of Phapan Khasseeanee, the wife of Loomrai, the prosecutor; I saw the deed committed from the crevices in the bamboo *tatee* of my verandah towards the south-east end of my house I cannot distinctly state which is the north and south, but Phapan Khasseeanee's house is towards the east and my house to the west, and adjoining my house is Oolang Khasseeah's house.

From the verandah of my house, the place where the deed was committed can be seen, and it was from there I saw it.

I do not know why the prisoners beat and dragged away Maikah Khasseeah, I do not know whether there was any ill-feeling between them, but I heard that Oojat Khasseeah and Semboo Khasseeah forbid Maikah Khasseeah from realizing some money, and that it was on this account there was some ill-will between them. On the night of the murder, the moon had set and it was by the light of the stars that I saw the deed committed.

When the prisoners were pulling away Maikah, it struck me that from the beating he had received from the prisoners, that he was dead, but from the blow of which prisoner Maikah was killed, and who first gave the blow, I cannot say. I saw only Oojat Khasseeah and Semboo Khasseeah, these two persons beating him with their sticks, I did not see the other prisoners

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beating him. I saw the deed committed from my house, but whether any one else saw the same, I cannot say.

Two days after the murder was committed, the prisoners, Oojat and Semboo Khasseeah, now present, forbid all the people of my Poonjee from mentioning any thing of the deed.

Question.—In your former depositions you said you did not know the length and dimensions of the sticks used by the prisoners, and now how is it that you have given the dimension, &c.?

Answer.—Being on oath, I have now given the dimensions. What I stated before was also true, besides I have now thought that it was on account of Maikah realizing money for Bur Singh Rajah, that Oojat and Semboo Khasseeahs forbid him, and that there was ill-feeling on that account between them.

Sunjiri Meekir, 6th witness for prosecution.—I know Oojat and Semboo Khasseeahs only among the prisoners, but I am not connected with any in any way, I also know the prosecutor, Loomrai, but I am not connected with him in any way.

He afterwards said that Semboo, prisoner, descended from the same race as himself.

About fourteen or fifteen months from this date, I and Oorah Meekir, who was with me, went to purchase paddy in Motho Poonjee, and being acquainted with Maikah Khasseeah of that place, he accommodated us with an empty house belonging to his son, Loomrai, the prosecutor's wife, up to the time of our eating our dinner and going to sleep, Maikah Khasseeah was with us in that house; about one *prohur* of the night, the prisoner, Semboo Khasseeah, entered the house and seizing Maikah Khasseeah pulled him out, and calling out to Oojat Khasseeah, told him that he had got hold of Maikah, to come and let us kill him, but I did not see Oojat, and I saw no one else, it struck me that there were about five or seven men outside the house.

On Semboo pulling Maikah out of the house, he told him, that after many days he had got him, and that he would kill him that day. After hearing all this, and seeing the deed committed, I became alarmed, and I and Oorah Meekir, who was with me, ran away from the house and went to the house of Kalloom Khasseeanee in the same Poonjee. After leaving that place and that house, what happened I cannot say, but after leaving that house about two *prohurs* of the night, Semboo Khasseeah, now present, came to me and threatened me and said that they had killed Maikah, and that if I made known the circumstance, that he would also kill me. On telling me this, I did not mention the circumstance, but the next day early in he morning, I went and mentioned the circumstance to

Loomrai, the prosecutor, and went away to my own Poonjee, this I know. 1854.

On the night of the murder the moon had set, when the deed was committed, it was star light. I live in another Poonjee and therefore I cannot say whether there was any ill-will between the parties. December 11. Case of OOJAT KHASSEEAH and others.

When Semboo, prisoner, pulled Maikah Khasseeah out of the house, he saw me and Oorah Meekir, and the house in which I went and remained after running away, is one in Semboo prisoner's compound, and on his hearing we were there, he went and threatened us.

Oorah Meekir, 7th witness for prosecution.—I know only the prosecutor and Semboo and Oojat Khasseeahs, but I am not in any way connected with them.

About one year ago from this date, I cannot say whether more or less, I and Sunjiri Meekir of the same Poonjee, went to Motho Poonjee to purchase some paddy, and being acquainted with Meekir Khasseeah of that place, he gave us a house in Loomrai prosecutor's wife's, Phapan Khasseeanee's, house and Maikah remained with us that night, about two *prohurs* of the night, the prisoner, Semboo Khasseeah, entered the house, and seizing Maikah Khasseeah, pulled him out of the house, calling out to Oojat Khasseeah, telling him to come, that he had got Maikah and would kill him, at that time there were three or four persons outside of the house, I and Sinjiri Meekir, who was with me, getting afraid, got out of another door in the house and ran off, and went and remained in Kalloom Khasseeanee's house. After seeing the circumstance stated, and running away, I do not know what happened, but the next day meeting Loomrai, the prosecutor, we mentioned the circumstance to him, and then left for our own Poonjee.

The moon had set, but there was star light at the time. When Semboo Khasseeah entered the house and pulled Maikah out, there was light from a fire in the house.

Why they served Maikah so I do not know, I do not know whether there was any ill-will between the prisoners and the deceased, because I live in another Poonjee.

On our remaining in Kalloom aforesaid's house, which is in the same compound as Semboo Khasseeah's, on the night of the murder, Semboo came to us, and forbid us to make the circumstance known to any one, and said that if we did so, he would also kill us.

When Semboo prisoner pulled Maikah out of the house, he saw me and Sunjiri Meekir who was with me.

Ooloom Khasseeah, 8th witness for prosecution.—I am acquainted with the prosecutor and prisoner, but have nothing in common to do with any of them.

About fourteen or fifteen months from this date, early in

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the morning, Oojat Khasseeah, afterwards he stated, Semboo prisoner, came to me and told me that Maikah Khasseeah was a sorcerer and therefore he had killed him, and he forbid my mentioning the circumstance to any one, he also told me that the murder was committed in the court-yard of Phapan Khasseeanee's house; after this conversation on my going to my cultivation, I saw some blood in the yard of Phapan Khasseeanee's house, and I thought it to be that of a human being. This is what I know.

The abovenamed Oojat Khasseeah and Ookoot Khasseeah, prisoners, are descendants of the same generation.

Ooankhen Khasseeah, 9th witness for prosecution.—I know the prosecutor and prisoners, but have nothing in common to do with them.

About fourteen or fifteen months ago, one day early in the morning, Oojat Khasseeah and Semboo, prisoners, came to me and told me that the night previous they had murdered Maikah Khasseeah and forbid me to make it known to any one, and they also told me that Ookoot, Oomoot, Oorah, San Singh and Joorah, prisoners, now present, were accomplices in the murder, and that they had conjointly committed the murder. After this, on going to my cultivation, I saw in the court-yard of Phapan Khasseeanee's house some blood, which was dried and having heard the above from the prisoner, it struck me that the blood must have been that of Maikah Khasseeah.

This is what I know, I am not aware as to what was the cause of the murder, nor do I know whether there was any ill-feeling between the parties

Ooman Singh Khasseeah, 10th witness for prosecution.--I know the prosecutor and prisoners, but I am in no way connected with any of them.

About fifteen months ago from this date, one day early in the morning, Oojat Khasseeah and Semboo Khasseeah, now present, came to me and told me that in the previous night they had murdered Maikah Khasseeah.

This I know. The above named prisoners did not mention any one as being accomplices with them.

Question.—In your deposition in the foujdary, you stated that the abovenamed Oojat and Semboo Khasseeah with Joorah, Ookoot, Oorah, Oomoot, and San Singh Khasseeah, as accomplices, murdered Maikah, and they had told you so, and now you state that only Oojat and Semboo murdered Maikah, and you do not mention the names of any others. What is the cause of this?

Answer.—I did not mention so before.

Question.—Did the above named two prisoners tell you that because Maikah was a sorcerer, and it was on that account they had killed him?

Answer.—The abovenamed Oojat and Semboo, prisoners, did

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tell me that Maikah was a sorcerer, and that it was on that account they had killed him. All this I heard from them personally.

The prisoners did not mention to me where they had murdered Maikah, and what had become of his corpse, and I did not ask them.

Question.—On the day in which the above prisoners told you the circumstances, did you go to Phapan Khasseeanee's, the prosecutor's wife's house, and did you see any blood anywhere there or not?

Answer.—I did not go there, and I saw no blood anywhere.

Question.—Why did the prisoners mention the circumstance stated to you?

Answer.—Those two prisoners told me and the other people of my Poonjee not to make known the circumstance stated.

Soonah Bassen, No. 11, *witness; Oomur Khasseeah, No.* 12, *witness; Soourah Khasseeah, No.* 13, *witness.*—Witnesses to finding the remains of Maikah and voluntary confession of Oojat Khasseeah at the thannah.

Marmanik Rajah No. 14, *witness; Gombhee Singh Rajah, No.* 15, *witness; Oodon Moontree, No.* 19, *witness.*—Witnesses to voluntary confession of Semboo prisoner, at the thannah.

Oojon Khasseeah, No. 16, *witness; Moneer Khasseeah, No.* 17, *witness; Oome Khasseeah No.* 18, *witness.* Witnesses to voluntary confession of Jattah Khasseeah and Phaubor Khasseeah.

Prosecution closed.

DEFENCE.

*Confession of Oojat Khasseeah, prisoner No.*1, *at the thannah.*—About ten or twelve months ago, I and San Singh Khasseeah, Oomoot Khasseeah, Oorah Khasseeah, Ooneeangna Khasseeah, Ookoot Khasseeah, Jattah Khasseeah, Jeeai Khasseeah, Oomor Saloo Khasseeah, Oojon Seree and Semboo Khasseeah of my Poonjee, all these persons were seated on the road at the south side of our Poonjee, about two *guntas*, and consulted together that Maikah Khasseeah by witchcraft destroyed the people of our Poonjee; and in order to kill him, we agreed together that wherever we met him at night, we would kill him. About four *dunds* in the night of that day, I left my house, and went to the yard of Maikah Khasseeah's house, on which Maikah came out of his house and the persons that I have mentioned above arrived there at that moment, and San Singh first struck him with a *thengah*, or *lattee*, one blow, and the rest of the people, some with sticks, and some with bamboos beat Maikah, and I with a wooden *thengah* (*alias* bludgeon or *lattee*) of that place, about eleven fingers in circumference and in length about five *poivahs* equal 1¼ *haths*, gave Maikah three blows, but on what part of his body my blows fell, I cannot tell, because at that time the clouds threatened to rain and it was very dark, and among the

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persons I have mentioned, I do not know how many blows were inflicted by each and where; Maikah fell on the ground with his face downward and from his mouth plenty of blood flowed and from the blows he had received he immediately died, I do not know by whose blows he was killed, and I did not examine the corpse to see where there were wounds.

At that moment I and the abovementioned persons held the corpse and took it to the south of our Poonjee, on the west side of the road in the jungle, where there is a cavern, in which we threw it, and then each one of us proceeded to our respective homes. About twenty days, after the perpetration of the deed, Moorkah Koor of Mookahr Poonjee came to my Poonjee; after this, the prosecutor Loomrai, made the circumstance known to the abovenamed Koor, who told me and those with me abovenamed that we had committed the deed, on which I and the others agreed to give the Koor two rupees to conceal the circumstance; he acceded to our wishes and promised not to reveal the deed, and we also agreed not to mention it to any one, and did not mention it; on the abovenamed Koor agreeing to receive the two rupees, Semboo Khasseeah and Phanbor Khasseeah paid him each one rupee.

The abovenamed Moorkah told me and the others to remove the corpse from where we had thrown it, and to secrete it elsewhere, after which, not agreeing amongst ourselves, we did not go to the place where we had thrown the corpse. About two and half months from this date, about ten o'clock, we went to the place and removed the bones from that cavern, I followed after them, and on the north-west side of our Poonjee, about one and half hour's journey, in a jungly place, they buried the bones, whether they were all brought away, I cannot say.

On my being apprehended, I showed the mohurrir both places, the place where we first threw the corpse and the place where we afterwards buried the bones, some of which were visible above ground; what became of the rest, I do not know.

When Moorkah Koor came to my Poonjee, Bur Singh Rajah was not there, and he knows nothing of this murder, but about two months from this date, the abovenamed rajah came to my Poonjee to collect a cess and remained three or four days in the house of Singrai Khasseeah, but no one paid him the cess.

I threw away the *thengah* with which I beat the deceased on the same place, where the corpse was first thrown.

Oomai Khasseeah of my Poonjee is aware of the deceased being a sorcerer, and his wife, Phapan Khasseeanee, about eleven or twelve months ago falling ill of small-pox, the deceased destroyed her by witchcraft, and my daughter, Kawan Khasseeanee, about fourteen or fifteen months ago being attacked with pains in the bowels and a flow of blood, was destroyed by witchcraft, this the prisoners with me were also aware of.

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The clubs with which the other prisoners inflicted blows on the deceased, after the deed was committed, what they did with them, I do not know, and even if I saw them, I could not recognize them and I could not tell the length and dimensions of those clubs, not having noticed them particularly.

I have no witness to bring in defence.

When we perpetrated the deed mentioned, besides ourselves there was no other person present.

Question.—After the perpetration of the deed, the person by name Moorkah Koor, who went to your Poonjee, and who advised you to conceal the deed, where did he remain, in whose house?

Answer.—Moorkah Koor remained for two days in the house of Soolandoor of my Poonjee.

Question.—Does any one know of Semboo and Phanbor prisoners having given the abovenamed Koor two rupees to conceal the murder?

Answer.—In the house of the abovenamed Soolandoor, in the presence of me and Juttah Khasseeah prisoner, the prisoner, Phanbor, gave the Koor one rupee, it was then about one *prohur* of the day, and Semboo Khasseeah having given me one rupee to give to the Koor, I gave it to him, but at that time there was no one present, and no one knows any thing about it.

I am not acquainted with the names of the fathers of the other prisoners.

When we consulted to murder the deceased on the day it was perpetrated, there was Ooman Khasseeah, Jattah Khasseeah, Jeetkan Khasseeah, Oomai Khasseeah of my Poonjee among the number that consulted on that occasion, and they were told of our intention of murdering the deceased, but when the deed was perpetrated they were not present. When we made this agreement, there was no one else present, and no one knew or heard any thing about it.

I forgot to mention their names before.

Question.—You stated before that Jattah Khasseeah also was among the number that consulted to murder the deceased, and that at the time he was murdered that Jattah Khasseeah was also beating him, but afterwards you state that he only consulted to kill the deceased, with the others, and they mentioned their intention of killing the deceased, but that at the time the deed was perpetrated, he was not there, which of these statements is the true one?

Answer.—What I stated afterwards of Jattah being only present at the consultation and that he said to kill the deceased is the true one, but he was not present when the deed was perpetrated.

Confession of No. 2, Semboo Khasseeah at the thannah.—What I stated yesterday in my reply, that Moorkah Koor of Mooka Poonjee had come and remained one and half year in my

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Poonjee in the house of Soolandoor, and that he had realized 1000 rupees as a cess from the people of my Poonjee as he said on the part of Bur Singh Rajah, and not on the part of Hazar Singh Rajah, and according to the order of Moorkah Koor, I and others apprehended Maikah of my Poonjee, and that according to the order of the Koor that Oojat Khasseeah of my Poonjee murdered the deceased, &c. In this statement, I have said many things untrue, at the instigation of Hazar Singh Rajah, but to-day I have thought within myself that by the statement I was taught to give, I would be a sufferer, and I now to-day make known all I know and all I did.

Maikah Khasseeah of my Poonjee used to destroy the people of the Poonjee by witchcraft, and in consequence, Jattah Khasseeah, Phanbor Khasseeah, Sunjiri Khasseeah, Oojangiri Khasseeah, Oomoo Laloo Khasseeah, Jeeri Khasseeah, San Singh Khasseeah and Oolongonodoor, Oome Khasseeah and Oomon Khasseeah all these people. about thirteen or fourteen months from this date, came to me and said, Maikah destroys people by witchcraft, and is this true or not, and after breaking an egg to find out, I and they consulted two or three days before the day of the murder on the road at the south side of my Poonjee, about 11 o'clock, and breaking an egg, I found out that Maikah was a sorcerer; on this, Jattah, prisoner, said, I am the rajah of the Poonjee, and he ordered us to kill Maikah Khasseeah; after this, leaving that place, about two *prohur* or five *guntas* after, I and the others assembled in the abovenamed place, and Jattah Khasseeah gave me a brass *chonatee sonjat*, a lime-box, as a pledge, and told me that he had given the *sonjat* pledge amongst his five *goostees*, kindred, and I and the others giving the *sonjat* pledge to his five *goostees* as their right, directed them to obey it, and I and the others agreed to murder Maikah, and I gave to Jattah a brass *chonatee sonjat*, a lime-box, as a pledge, and this *sonjat* or pledge was exchanged amongst us, and on breaking an egg and agreeing to murder Maikah, Oojat Khasseeah of my Poonjee was also present, and at that time there was no one else present, but ourselves, and no one knew any thing about this.

About two or three days after the agreement between us, I and the abovenamed, about two or three *dunds* of the night, went to Maikah's house; at that time Oomoot Khasseeah, Ookoot Khasseeah, Oorah Khasseeah, Ooneeangna Khasseeah, and besides three other persons of my Poonjee, went, but their names, I do not know, but the abovenamed Jattah Khasseeah did not go, he had gone to the Choyar Meekir country, we, going one behind the other about twenty or twenty-five persons, collected at my Poonjee, and on going towards Maikah's house, I saw two Meekirs, their names, I do not know, they are Meekirs, I do not know them, they were cooking in that house, and Maikah was seated there, after which, we went and remained outside, near to

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the house, and they after eating their dinner, went to sleep with Maikah.

About one and half *prohur* of the night, after all the people of the Poonjee had gone to sleep, I went into the house and pulled Maikah up from sleep, and brought him outside of the house, on which among the persons I have named, San Singh first with a club or *thengah* gave the deceased, Maikah, two or three blows and the others also beat him, after which Maikah becoming speechless and falling on the ground, I took a small bamboo stick, four or five fingers in circumference and half *hath* long, from the verandah of the house, and gave Maikah one blow with it, but where the blow fell, I cannot say. I cannot say by whose blow Maikah was killed, and with what weapon each person gave the blows I cannot say on account of its being a dark night.

The deceased was wounded on the head, mouth and nose, from where blood flowed and how many wounds there were, I cannot say, and afterwards I do not know who among the persons I have mentioned removed the corpse, I did not throw away the corpse.

The club with which I struck the deceased, I threw away in the jungle to the north of my Poonjee on the night the deed was perpetrated, I will be able to point out that jungle, and if I see that club I could recognize it again, I heard from San Singh, Ookoot, Oorah, Ooneeangna, Oomoot and Joorah Khasseeahs, that they threw the corpse in a valley to the south of the Poonjee in the jungle, and about ten days afterwards, Moorkah Koor of Mookah Poonjee came to my Poonjee, and remained in the house of Soonandoor for two days and he, hearing of the perpetration of the deed from the persons I have named, I and they agreed to give him two rupees not to make it known, to this he agreed and told us not to be alarmed about the consequences of this deed; afterwards about one *prohur* of the day I gave Oojat Khasseeah in the house of Soonandoor one rupee, and he gave it to Moorkah Koor, and Phanbor gave him personally one rupee, at that time Jattah Khasseeah was present, there was no one else besides him.

The *choonatee* pledge given to us by Jattah Khasseeah to murder the deceased and the *choonatee* pledge I had given him were again returned to each other about two or three days after the deed was perpetrated, at two or three *dunds* of the day in my house, but at that time there was no one else present.

I told the mohurrir last night that many things that I mentioned in my former deposition was false, and that I had done so at the instigation of Hazar Singh Rajah. What I have deposed to-day is true.

When Moorkah Koor came to my Poonjee, Bur Singh Rajah was not there, and he knows nothing of this murder, but about

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two or two and half months ago, Ootook Khasseeah of Nasarot Poonjee and Oober Khasseeah came in search of the other prisoners, and remained in the house of Sunjiri Khasseeah for three days and then went away, I have no witnesses to give in defence. Besides the prisoners and myself no others know of the deceased being a sorcerer, he was not at ill-will with any of us.

I was never apprehended or taken up for any crime before.

I mention Juttah Khasseeah as witness that Hazar Singh Rajah advised me to give the depositions that I did before, besides him I have no other witness, but Hazar Singh Rajah gave me that advice in Soonandoor Khasseeah's house early in the morning of the previous day.

I do not know the names of the fathers of the other prisoners.

Confession of Juttah Khasseeah at the thannah—About eleven or twelve months ago from this date, Oojat Khasseeah of my Poonjee on the first day early in the morning or before sunrise, came to my house and finding me alone told me that Maikah Khasseeah of his Poonjee destroyed people by witchcraft, and going out to break an egg, I told him I would break it the day after, hearing this, Oojat left my house and went away, the day after, early in the morning the above named Oojat Khasseeah and Semboo Khasseeah of my Poonjee, went to my house and finding me alone, they told me to break an egg, after which, I and they together, went and getting on the Kamatoorootun road, we met Phanbor Khasseeah, Ooman Khasseeah and Jeetphan Khasseeah, they were seated; Semboo Khasseeah had taken an egg with him, and Oojat was the person appointed to break the egg; after this, Oojat broke the egg and saw that the omen was not good, after this I and the others went to our respective homes. The day after, I and the others that I have named, about two *prohurs*, went to that road, and Semboo took an egg and Oojat was appointed to break it; Semboo, having broken the egg, said that to kill Maikah, the omen was good; hearing this, I and Oojat and Semboo agreed to kill him, but Phanbor, Jeetphan and Ooman Khasseeahs, not agreeing with us, went away. On our leaving the place, we agreed and said to-morrow he would break another egg and see if the omen is good, we will kill Maikah and keep the *sonjat* pledge; accordingly the next day like the day before, Semboo and Oojat Khasseeahs took an egg and *khat* with them; I and Phanbor, Jeetphan Khasseeahs, and Ooman Khasseeah six of us together, about one and half *prohurs* of the day, went to the place, Semboo took and broke the egg and having had a good sign, I and they agreed to murder the deceased, and I gave to Semboo, prisoner, a Kassa *choonatee sonjat* pledge as a sign, and said that it was to kill the deceased, and on this account, should there be either good or evil, it was to be laid to me, and their five *goostees* (kindred) gave me a *sonjat* pledge that this agree-

ment should not be broken and that the deceased must be killed, to which Semboo agreed, and gave me a Kassa *choonatee sonjat*, and in this agreement, and the breaking of the egg and giving and receiving *sonjat* pledges, no one but ourselves were present, and no one besides ourselves were present after the giving and receiving of these *sonjats*; about three or four days, I went to the Bhog or Meckir's country on my own account, where remaining ten or twelve days, I returned to my own Poonjee, after which, San Singh and Ookoot Khasseaahs told me that Oojat and Semboo Khasseeahs had killed the deceased. After which, I took no interest about the affair.

Two days after returning to my Poonjee, I went to the house of Semboo and brought away the *choonatee* pledge I had given him, and the *choonatee* pledge I received from him, I returned again.

No one else besides ourselves knew that Maikah, the deceased, was a sorcerer.

No one reported the circumstances of this case to Bur Singh Rajah and Moorkah Koor, but one month after Moorkah Koor came and remained two days in the house of Soonandoor; early in the morning, Oojat Khasseeah and Semboo Khasseeah, these two persons, went to Soonandoor's house and I saw them give the Koor two rupees, and the Koor forbid us making the deed known to any one, and before Semboo was apprehended, I did not see, nor hear that Hazar Singh Rajah had put him up to say any thing.

I have not been ever before taken up for any crime.

When I and Semboo received back our *choonatees* that we had given each other, no one was present.

When the deed was committed I went to sell salt, tobacco, betel, &c., in Marung Poonjee, Kharputtee Poonjee, Oomooang Poonjee and Saneesa Poonjee, and sold the same to respectable people in those Poonjees.

In whichever Poonjee it happened to get night I remained there; at the time I left my home to the time I came back I put up in houses at different places. In Kharputtee Poonjee two Meckir women, their names I do not know, but I could recognize them, they live together, it was in their house I stopped when there. At the time the deed was perpetrated I was not at my own house, this Semboo and Oojat Khasseeahs are aware of.

Confession of Phanbor Khasseeah at the thannah.—I did not murder the deceased Maikah, and when the deed was committed I was not aware of it, but about ten or eleven months from this date, Semboo Khasseeah and Oojat Khasseeah of my Poonjee informed me, that two days ago they had killed Maikah, but for what reason and how the deceased was killed or whether at night or day, he did not tell me, and I did not inquire of him;

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the day on which they informed me of the murder I did not leave my house either night or day; my daughter, Kadob Khasseeanee, not of age, and my son, Oosum Khasseeah, being attacked with small-pox; I did not leave my house. From my house to the house of deceased where the murder was perpetrated, if a loud call was given, it would be heard, I can give no evidence in support of what I have stated.

I was neither the friend nor the enemy of the deceased.

I did not hear that the perpetration of this deed was reported to Bur Singh Rajah of Moleem, and I did not see Bur Singh Rajah at my Poonjee nor Moorkah Koor, but the day on which Semboo and Oojat informed me of their having killed the deceased, four or five days after, Oojat told me not to make known any thing about the deed to any one, and to give Moorkah Koor one rupee, and I on that day gave Oojat Khasseeah one rupee, there was no one present when the rupee was given.

Question.—You say you did not commit the deed, and yet on the saying of Oojat you mention that you gave one rupee to Moorkah Koor. What is the cause of this?

Answer.—Oojat Khasseeah is the sirdar of my Poonjee; on his asking me I gave him the rupee, but whether he gave that rupee to Moorkah Koor or not, I cannot say.

I cannot say whether the deceased was a sorcerer or not.

I and the prisoners, Semboo, Oojat and Jattah Khasseeahs of my Poonjee never came to any agreement to murder the deceased.

I was never taken up before for any crime.

Confession of Oojat Khasseeah before the jury.—I did murder Maikah Khasseeah, but I did not murder him alone.

About fifteen or sixteen months ago, one day at night, Semboo Khasseeah, now present, pulled the deceased Maikah Khasseeah out of his house; I and Joorah Khasseeah, Oorah Khasseeah, Oomoot Khasseeah, San Singh Khasseeah and Ookoot Khasseeah, prisoners, with clubs, beat the deceased and he died, I beat the deceased with a club, about one and quarter hands long and eight or ten fingers in circumference, one or two blows; with those blows, the deceased, Maikah, was not killed; by the blows inflicted by the other prisoners, Maikah was killed. The cause for murdering Maikah was, that he used to oppress the people of the Poonjee, and used to take money from the people of the Poonjee, and used to get his work done by them.

When Maikah Khasseeah was killed, his corpse was removed to the west of Motho Poonjee by Joorah Khasseeah, Oorah Khasseeah, Oomoot Khasseeah, San Singh Khasseeah and Ookoot Khasseeah, these five persons; I did not pull the corpse and remo

I have no other defence or witnesses to offer.

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Confession of Semboo Khasseeah before the jury.—I did not murder Maikah Khasseeah.

While I was in my Joom Khat, Oojat Khasseeah sent for me repeatedly and on going, I saw Oojat Khasseeah, Jattah Khasseeah, Oomor Lalloo and others, three or four persons sitting and breaking eggs, on which Oojat said that Maikah used to worship the *Deo* and kill people, the test of which he had found by breaking an egg, and that Maikah must be killed, on which I said, it is now the time of the Government, and if we do such a thing, we shall be obliged to spend much money and be punished, and that it was not good to do so. Oojat Khasseeah then said, you are repeatedly forbidding us to commit the deed, if you do not agree with us, we will kill you also; on his saying which, and having no resource left, I merely promised to join in killing Maikah, and gave him a *choonatee sonjat* pledge, but in my mind, I had no wish to kill Maikah. Afterwards I went one night to Maikah Khasseeah and told him that Oojat Khasseeah said, you destroy people by witchcraft, and desired him to come and clear himself of the charge. Maikah then feeling afraid was inclined to come, afterwards from pride he would not come, on which I pulled him out of his house, and Oojat Khasseeah with a club, with which they pound paddy, struck Maikah two or three blows, the first blow fell on my left hand and having much pain and feeling senseless, I sat down there. With the blows inflicted by Oojat, Maikah fell to the ground, but whether he was dead or not I cannot say, seeing this, I went away to my own house, I did not assault the deceased or strike him with any stick. The Chirapoonjee darogah without cause apprehended me in Motho Poonjee, and accused me of killing the deceased, and forced me to confess to it.

Being tied up and helpless, I confessed to the darogah of the thannah.

Oomor Laloo is witness of my forbidding the murder of the deceased, Maikah, I have nothing more to offer in my defence.

Confession of Joorah Khasseeah No. 3, prisoner, before the jury.—I did not murder Maikah Khasseeah, I have no defence or witnesses to offer, and I did not drag the corpse of Maikah Khasseeah away. When the police darogah went in the mofussil, Oojat Khasseeah threatened and took me in the jungle and picked up some bones, but what bones they were, I do not know.

Confession of Oorah, No. 4, before the jury.—I did not murder Maikah Khasseeah. When the police darogah went in the mofussil, Oojat Khasseeah threatened and took me, and according to his showing I picked up some bones, I have no other defence or witnesses to offer. What bones those were I do not know, Oojat Khasseeah said that those bones were Maikah Khasseeah's.

Confession of Oomoot Khasseeah, No. 5, prisoner, before the

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jury.—I did not murder Maikah Khasseeah, &c. &c., the same as above.

Sap Singh Khasseeah, No. 6, prisoner, ditto.—Ditto ditto.

Ookool Khasseeah, No. 7, prisoner, ditto.—Ditto ditto.

Jattah Khasseeah, No. 8, prisoner, ditto.—I never consulted with the other prisoners to kill Maikah Khasseeah.

Oojat Khasseeah, the prisoner, now present, told me that Maikah Khasseeah by *Deo Poojah* destroyed people and brought them into difficulties, and that if I did not give a *choonatee sonjat* pledge and join in killing Maikah, that I was myself a sorcerer, saying this and using many threats, I having no resource left, I agreed to what he proposed, and gave a *choonatee sonjat* (pledge), but in my mind I never had any idea of doing such a thing, but merely from fear I gave the *sonjat* (pledge). Maikah is my sister's husband and on this account I had no wish or reason to enter into any agreement to murder him. The *choonatee sonjat* (pledge) that I gave Oojat Khasseeah through fear; the day after I left my house and went to the Meekir country. The reason for my doing which, is that Oojat Khasseeah had made agreement to murder my brother-in-law, and if I stopped at home, Oojat would accuse me as having been connected with him in the murder, and not feeling safe to remain I went to the Meekir country.

Fifteen days after, I returned to my Poonjee and going home I heard that they had murdered Maikah. When the deed was perpetrated, I was not at home, and to murder Maikah I never gave any order to Oojat Khasseeah or any one else.

I have no other defence to make.

Confession of Phanbor before the jury.—I was not privy to the crime of Maikah's murder and did not advise its concealment, and I gave no one any money to conceal it; Oojat Khasseeah a respectable man of my Poonjee, a prisoner, being in want of a rupee asked me for it, and I gave it to him, I never committed any crime. Besides this, I have no witnesses or defence to make.

Opinion of jury.—Having heard all the papers of the above case in the presence of the witnesses, and the confessions and denial of the prisoners, we have, after mature consideration, come to the conclusion that the prisoners, Nos. 1 to 7, murdered Maikah Khasseecah and dragged away the corpse with the intent of concealing the crime, and that Oojat and Semboo Khas- were the ringleaders, is clearly proved, and that the risoners, Nos. 1 to 7, are deserving of punishment for the crime id to their charge. On the prisoners, Nos. 8 and 9, Jattah and Phanbor, no crime is proved and we therefore think them erving of acquittal.

Opinion of the officiating deputy commissioner.—From the vidence adduced on this trial, it appears that in June or July,

1853, No. 1, Oojat, No. 2, Semboo, No. 3, Joorah, No. 4, Oorah, No. 5, Oomoot, No. 6, San Singh, No. 7, Ookoot, No. 8, Jattah, prisoners, met together and had a consultation, and deliberately exchanging pledges to carry out their intentions, resolved on murdering the deceased, Maikah, because he was a sorcerer, and agreeably to their resolution the prisoners, Nos. 1 to 7, went to the deceased's house at night; Semboo, No. 2, prisoner, entered the house and dragged the deceased, Maikah, out and then the prisoners, Nos. 1 to 7, fell upon him and beat him to death with sticks or bludgeons. The body was then dragged away and thrown into a doll, near where the murder had been perpetrated.

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Sometime afterwards, they buried the body in the jungle. The deed was perpetrated in the presence of several witnesses, and the prisoners, Nos. 1 to 7, are identified as actors in the tragedy; Nos. 1 and 2, prisoners, confessed their guilt before the police, magistrate and jury, Nos. 3 to 7, prisoners, plead *not guilty*.

Some bones of the deceased, Maikah, were found by the police mohurrir in the place pointed out by the prisoner No. 1.

A cold-blooded premeditated murder has beyond a doubt been perpetrated and the jury and magistrate concur in convicting the prisoners, Nos. 1 to 7, of the charge of wilful murder. The Khasseeahs have been under British rule upwards of twenty years, though some of the chiefs are nominally independent, excepting for heinous crimes, and though they are a rude race, yet from their frequent intercourse with our subjects on the plains, they must be fully aware of the penalties awarded by us for heinous crimes; on these grounds I cannot support the recommendation of the magistrate for a minor punishment. The charge of wilful murder is, in my opinion, fully established against the prisoners, Nos. 1 to 7, and they are amenable to the utmost penalty of the law, but, Nos. 1 and 2, prisoners, Oojat and Semboo, were the ringleaders in the perpetration of the atrocious deed, I therefore recommend that they be both sentenced to suffer death, and a sufficient example will be established, and the ends of justice attained, should the Court mercifully spare the lives of the prisoners, No. 3, Joorah, No. 4, Oorah, No. 5, Oomoot, No. 6, San Singh, No. 7, Ookoot, and sentence them to imprisonment with labor in irons for life in banishment. The guilt of No. 8, prisoner, Jattah, as an accessary before the fact is very clear from the accusations of the prisoners, Nos. 1 and 2, and by his own statements before the police and jury, he consulted with the prisoners to put the deceased, Maikah, to death, because he was a sorcerer. The deceased, Maikah, was his sister's husband, yet he did not refrain from joining the prisoners in giving a pledge to effect his death, neither did he attempt to save the life of his brother-in-law, but went into the adjoining Meekir country, and did not

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return until the deed was perpetrated; I propose therefore that he be sentenced to seven years' imprisonment with labor in irons.

No. 9, Phanbor, prisoner, confessed before the police that he heard of the murder of the deceased, Maikah, from the prisoners, Nos. 1 and 2, and gave them a rupee to conceal the crime. Before the magistrate and jury he admits he gave No. 1, prisoner, one rupee, because he asked him for it, I concur with the magistrate in considering him guilty of the third count of privity in the above crime of murder, and recommend that he be sentenced to one year's imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr J. H. Patton.) This trial was submitted by the officiating deputy commissioner of Assam with his letter of the 25th October, 1854 The murder is said to have taken place in June, or July, 1853, and the cause of the delay that has occurred in the investigation is thus accounted for.

Shortly after the murder, Rajah Bur Singh happened to visit the Poonjee and was informed by the prosecutor that the occurrence had taken place. The Rajah enjoined silence on the subject and promised to see the matter satisfactorily settled. The prosecutor after this, went on a mercantile expedition which lasted about eleven months. When he returned, Rajah Hazar Singh was *at* the Poonjee. He informed the Rajah of the murder that had taken place and was directed by him to apprize the authorities of the occurrence. The prosecutor did so and on this the investigation commenced

Further, the delay took place in consequence of a reference to the commissioner of Assam relative to jurisdiction, reply to which reference was received on the 1st July, 1854. From this date, the officiating principal assistant and magistrate of Cherrapoonjee proceeded actively in the investigation of the case.

On the 16th September following, that officer submitted his proceedings with his letter of reference under the rules for the administration of criminal justice in Assam to the deputy commissioner, whose report with its accompaniments gives a very detailed narrative of all the circumstances of the case from the period at which it was taken up by the officiating principal assistant and magistrate.

It will be seen that the magistrate and the jury convict the prisoners from Nos. 1 to 7, of the murder of Maikah Khasseeah and find it clearly proved that the prisoners, Oojat Khasseeah, No. 1, and Semboo Khasseeah, No. 2, were the ring-leaders on the occasion. The jury return a verdict of *not guilty* against the prisoners, Nos. 8 and 9, from which finding however the magistrate dissents.

The deputy commissioner, in concurrence with the opinion

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of the magistrate and jury, convicts the prisoners from Nos. 1 to 7, of wilful murder. He also holds it proved that the prisoners, Nos. 1 and 2, were the ringleaders and principal actors in the murder, and proposes that they should be sentenced to suffer death, considering that a sufficient example will be established and the ends of justice attained by the above sentence, he would recommend the prisoners from Nos. 3 to 7, to the mercy of the Court and pleading for their lives, would sentence them to imprisonment with labor in irons for life in banishment.

The deputy commissioner has recorded in his report his conviction, that as the Khasseeahs have been under British rule upwards of twenty years though they are a rude race, yet from their frequent intercourse with our subjects on the plains, they must be fully aware of the penalties awarded by us for heinous crimes. On these grounds the deputy commissioner disregards the recommendation of the magistrate for the imposition of the minor punishment of transportation for life on the prisoners, Nos. 1 and 2.

We concur in the recommendation of the deputy commissioner that the prisoners, Oojat Khasseeah No. 1, and Semboo Khasseeah, No. 2, should be sentenced to suffer death, and they are sentenced accordingly. The prisoners, Joorah Khasseeah, No. 3, Oorah Khasseeah, No. 4, Oomoot Khasseeah, No. 5, San Singh Khasseeah, No. 6, and Ookoot Khasseeah, No. 7, were sentenced to imprisonment for life with labor in irons, but we direct that this sentence be endured in transportation, not banishment, as proposed by the deputy commissioner.

As regards the prisoner, No. 8, Juttah Khasseeah, we observe that by his own statements before the police and the jury he is clearly an accessary before the fact. He took part in the councils to murder the deceased who was his brother-in-law and exchanged pledges with the other prisoners to compass that object. We sentence him, as proposed by the deputy commissioner, to 7 years' imprisonment with labor and irons.

We do not think that the crime of privity is established against the prisoner, No. 9. He is said to have admitted that he gave a rupee to the prisoner, Oojat, to conceal the murder, with which however he is not shown to have had any concern, but before the magistrate his admission only extends to having given the money because the said prisoner asked for it. We do not think that a sufficient case is made out against the prisoner. We therefore acquit him and order his immediate release.

PRESENT:

B. J. COLVIN, ESQ., *Judge.*

TOOFANEE DAIE AND GOVERNMENT

versus

BADUL ALIAS BATOOLEEAH DAIE.

Mymensingh.

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Case of BADUL *alias* BATOOLEEAH DAIE.

Appeal rejected, the prisoner having in the sessions court acknowledged his confessions in both the lower courts, and having advanced a plea for the first time in appeal.

CRIME CHARGED.—*Trial No.* 4, 1st count, committing burglary in the house of the prosecutor and stealing therefrom a silver ornament, valued at rupee 1-2; 2nd count, wounding Hossain Khondkar. *Trial No.* 5, committing burglary in the house of the prosecutor and stealing therefrom property consisting of brass and iron utensils and cloth valued at Rs. 7-5-9.

CRIME ESTABLISHED —*Trial No.* 4, burglary attended with wounding *Trial No.* 5, burglary and theft.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 31st August, 1854.

Remarks by the sessions judge.—*Trial No.* 4, it appears that on the night preceding the Mahomedan Eed, the prisoner entered the prosecutor's house in the apartment occupied by his aunt and as he snatched from her arm a silver bangle she awoke and screamed out. upon which the prosecutor's brother Hossain Khondkar who occupied the same house, started up and immediately seized him and called out to his brother that a thief had nearly killed him, and that he wrested the instrument from his hand and threw it away, his brother immediately came to his assistance and secured the thief and found that there was a severe wound on his back and on the palm of his hand, and the instrument used was found to be a broken razor. Hossain Khondkar deposed that when he caught the thief he cut him on his back and was trying to cut his throat with the razor, when he caught hold of it and wrested it from him, and was thus wounded in his hand. This took place at about a *prohur* of the night remaining, and when the villagers collected, Sheikh Toofanee Daie (the prosecutor in the following case) said that a burglary had been perpetrated in his house also that night, to which the prisoner replied that it had been committed by him and his companions, and he pointed out the articles stolen in a clump of bamboos where they were concealed, whereupon the prisoner and the articles were made over to the chowkeedar In the thannah and before the magistrate he confessed to having proceeded along with one Alee Mahomed and Fessooah to steal; that they first committed a burglary at the house of Toofanee Daie (it was midnight) and then went to that of Gedoo Khondkar (prosecu-

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Case of BADUL *alias* BATOOLBEAH DAIE.

tor in this case); that he was outside, his companions entered and as they were removing articles from the house the people awoke and his party escaped leaving him in their hands; that Alee Mahomed however returned to his rescue and a scuffle took place, and the razor which was in Alee Mahomed's hand wounded witness No. 1. In this court he adhered to the above statement and offered no defence. The fact of his immediate capture in the house where he went to steal, his having wounded witness No. 1, with a razor in a most severe manner, there being a long and deep cut across his back, and a silver bangle having been immediately found on his person, which was fully proved, I concurred in the *futwa* which convicted him of burglary attended with wounding. Had it not been for the resolute manner in which the prosecutor's brother grappled with the thief, and the prosecutor's opportune arrival to render him assistance, serious injury, if not murder, might have been anticipated.

Trial No. 5. From the evidence of the witnesses examined on the trial and the record of commitment, coupled with the admission of the prisoner, it appears that the prosecutor's house was burglariously entered on the night preceding the Mahomedan Eed, and property consisting of brass and copper utensils and clothes stolen therefrom. The prosecutor, Toofanee Daie, on hearing Gedoo Khondkar call out, awoke, and found that there was a hole on the floor of his own house and his property stolen; he went to Gedoo's house where he saw a thief caught, and questioning him as to the burglary in his house, he confessed to having committed it, and pointed out his property under a clump of bamboos where he concealed it. In the thannah and before the magistrate he admitted having proceeded with Alee Mahomed and Fessooah to steal; that his companions entered the house and carried out the articles, but he staid outside; that they then went to Gedoo Khondkar's house to steal, leaving the articles under the clump of bamboos, where he was caught. In this court he denied having either committed the burglary or given over any property, but admitted his thannah and foujdary confessions and offered no defence. The *futwa* of the law officer convicts him of burglary and theft in which I concurred.

Sentence passed by the lower court.—In two cases to be imprisoned with labor and irons for the period of ten (10) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner in the sessions court acknowledged his confessions in both cases before the darogah and magistrate. In his petition of appeal, for the first time, he says that the charge of theft was got up to save Gedoo Khondkar, the prosecutor, in this case, from the consequences of a clandestine visit by him to the daughter of Toofanee Daie, the prosecutor, in the next case. Had there been any truth in this story, it would not have been reserved for the petition of appeal. I reject the appeal.

PRESENT:

B. J. COLVIN, ESQ., *Judge*.

GOVERNMENT AND DASHEE BUSTOBEE

versus

TENGUR MALEETHA (No. 1,) PARBAZ MUNDUL (No. 2,) ZURRIP MUNDUL (No. 3,) FURRID SHAH FUKKIR (No. 4,) KHOODEE SHAH FUKKIR (No. 5,) CHABER SHAH FUKKIR (No. 6,) AND MEESHOO TAKADGEER (No. 7 APPELLANT.)

Rajshahye.

1854.

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Case of MEESHOO TAKADGEER and others.

The prisoner's appeal was rejected, the grounds urged by him being new ones, not taken in the sessions court.

CRIME CHARGED.—Prisoner No. 1, dacoity in the house of Dashee Bustobee, the prosecutrix, in which property to the value of Rs. 48-0-6 pies was plundered. Prisoners Nos. 2, 3, 4, 5, 6 and 7, 1st count, the above dacoity; 2nd count, receiving portions of the abovementioned property, knowing at the time that such property had been obtained by dacoity.

CRIME ESTABLISHED. —Prisoner No. 1, being an accomplice in dacoity, prisoners Nos. 2, 3, 4, 5 and 6, knowingly receiving property plundered in dacoity, prisoner No. 7 being an accomplice in dacoity.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th September, 1854.

Remarks by the sessions judge.—The co-prosecutrix in this case with the Government was a Bustobee, being under the protection of some one, to which and other fortuitous circumstances, she may attribute the recovery of her property. The dacoity was a simple one, committed by a gang of eight men, according to the confessions of the prisoners and the prosecutrix, her mother and a lad, employed as a cow-herd, recognized No 1, and the dacoits, and mentioned the fact to the neighbours, who assembled immediately after the dacoity at her house. This led to his apprehension and of Nos. 2 and 7, who had been seen with No. 1, the day previous to the dacoity. No. 2 confessed before the darogah implicating Nos. 1, 3, 4, 5, 6 and 7, and with the exception of No. 1, all confessed and delivered up some portion of the plundered property, part however had been melted, and run into bars of silver. The confessions of Nos. 2, 3, 4 and 5, were fully proved. Only one of the witnesses to the confession of No. 6, could read and write and only one to that of No. 7, was in attendance. But the latter had repeated his confessions before the joint-magistrate, and which was fully proved to have been voluntary. I have therefore on

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the direct evidence to recognition of No. 1, and the foujdary confession of No. 7, and who produced a *dhootee* and *saree* (nearly new) claimed and identified by the prosecutrix's witnesses, convicted these two of being accomplices in the dacoity, the other five I have convicted of knowingly receiving plundered property. They all admitted the articles produced were found in their houses, but could not establish their right to any of them, while the evidence for the prosecution fully proved that they belonged to the prosecutrix. The prisoners have been sentenced as herein stated, and the reason I have passed a lighter sentence on No. 3, is with advertence to his age, which must be sixty at least. The trial was held under Act XXIV. of 1813, and the Court's Circular Order of the 5th July, 1844. No mulct or fine was imposed under Act XVI. of 1850, as from a calculation made, the value of the property recovered (including the bars of silver and broken ornaments) covered the amount plundered by the dacoits. The dacoity occurred in the borders of the Nuddea district, and some of the prisoners I suspect were the remnants of a gang who were tried and convicted by me at the sessions for Pubna held in April, 1852. No. 3, on that occasion, was acquitted for want of proof.

Sentence passed by the lower court. Nos. 1 and 7 to seven years, Nos. 2, 4, 5 and 6, to five years, and No. 3 to three years' imprisonment, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) Meeshoo Takadgeer (No. 9.) has appealed, two articles were found in his house, which his wife on the 29th June gave out in his absence from where it had been concealed. He himself was not seized till the 6th July, when he confessed before the darogah and the joint-magistrate In the sessions court he denied, and in his petition of appeal he tells a story why he was accused, which he did not before the sessions judge, and says that he was ill-treated to confess, which he had not stated before that officer. I see no reason to interfere with the finding and sentence.

PRESENT:
SIR R BARLOW, BART., *Judge*
J H. PATTON, ESQ., *Officiating Judge.*

MUSST BUDHNI AND GOVERNMENT
versus
PURIAG SINGH.

Bhaugulpore.

1854.

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Case of PURIAG SINGH.

Prisoner acquitted on a charge of rape owing to the insufficiency of the evidence.

CRIME CHARGED.—Rape committed on the person of Musst. Budhni, prosecutrix.

Committing Officer—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr R. N. Farquharson, sessions judge of Bhaugulpore, on the 7th November, 1854.

Remarks by the sessions judge—Prisoner pleads *not guilty.*

Prosecutrix, a good looking young woman, about twenty, was going with two other women, witnesses Nos 1 and 2, to gather Mohwa flowers, but lagged behind and was alone, when prisoner, a stout young man, about five and twenty, rushed out on her and seized her in his arms and taking her a short distance to the roots of Mohwa tree, threw her down and lifting up her clothes, proceeded to gratify his lust. On prosecutrix calling out, the other two women, who had gone only about two *russees ahead,* turned back and dragged prisoner from his position on prosecutrix, and took her home to her husband, who would have complained at once at the Durcapore thannah, about five coss distant, but was prevented by prisoner and his relatives, who detained him forcibly, trying to persuade him to forego prosecution.

It was thus some days before he could lay his complaint, but we find that he proceeded direct to the deputy magistracy at Barh, and that prosecutrix presented a petition to the deputy magistrate, dated the 30th of June; prosecutrix was three months gone with child by her husband, when this happened. Prisoner was a stranger to her, she being lately arrived at the place, he was known however to the two other women, his house being close to their own. The prosecutrix's witness, No 8, confirms the above story and also deposes that prisoner was once before concerned in a like case with a Kaharin, but was not brought to justice, this happened about six years ago.

Prisoner in his defence says that Budhni's husband, Khenia, owed him 4 Rs. 8 annas, when he went to be paid he was refused, he had a bond for the amount, but it was too much torn to be produced. He asked Khénia to renew the writing, but he refused it, to avoid payment of this debt that the present accusation is made, he calls two witnesses to prove the above.

Gyan Singh, No. 10, says that prosecutrix's father-in-law has

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owed prisoner 6 Rs. for eight years. Before the magistrate, he said he knew nothing about the matter, except that he had heard of the rape on Musst. Budhni.

Bikram, No. 11, says he knows nothing of the matter, said the same before the magistrate.

The jury bring in a verdict of guilty, in which I concur.

The evidence is clear and conclusive, prisoner in his defence before the magistrate tells a somewhat similar story about the debt, but makes the debtor, prosecutrix's father-in-law, and the amount of debt ten rupees.

I convict Puriag Singh of the rape of Musst. Budhni, and would sentence him to seven years' imprisonment with labor in irons.

The case was first instituted in the deputy magistrate's court at Barh. It was transferred to Monghyr on account of the illness of the deputy magistrate. The depositions of the witnesses first taken at Barh were afterwards attested by the magistrate of Monghyr, on the 14th October, 1854, when apprehension of the prisoner was ordered.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. H. Patton.) There are only two female witnesses, who say they were in company with prosecutrix and saw what occurred. Their statements before the magistrate are contradictory on material points to each other, and to the story which as prosecutrix herself told some seven days after the occurrence. Her husband has not given in any complaint, nor is there any proof offered that he was detained by the prisoner and his relatives, with the view to persuade him to forego the prosecution. Further, all the witnesses cited by the prosecutrix, to prove that they came to the spot on hearing her cry out, deny that they went there at all, they merely say they heard of the assault committed upon her. The charge is easily made and should be supported by better evidence than is to be found on the record. We acquit the prisoner and he must be released.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

NARAONI BOISTOBE AND GOVERNMENT

versus

DOOKHIRAM BAOOREE CHOWKEEDAR (No. 4,) AND PURAN BAOOREE (No. 5.)

Nuddea.

1854.

December 14.

Case of DHOOKIRAM BAOOREE and another.

Two prisoners charged with dacoity were acquitted on that charge by the sessions judge, but were ordered to find security for good behaviour for three years. This order was reversed in appeal.

CRIME CHARGED.—Prisoner No. 4, committing a dacoity with wounding in the house of Naraoni, prosecutrix, he being at the time employed as a police chowkeedar of the *muhulla* in which she resided. Prisoner, No. 5, committing a dacoity with wounding in the house of Naraoni, prosecutrix.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of Nuddea.

Tried before Mr. J. H. Patton, officiating additional sessions judge, on the 6th September, 1854.

Remarks by the officiating additional sessions judge.—The prosecutrix and her husband are an aged couple and were disturbed one night by falling of earth, as if some one was breaking into the house by cutting through the wall. They procured a light and searched the inside of the house, but finding all right they were going down the steps of the verandah with the light to examine the exterior of the building, when the old man was suddenly attacked by two persons with clubs and knocked down. The prosecutrix immediately retired into the house and attempted to close the door on the assailants, but they forced it open and entering with a lighted torch seized and stripped her of sundry silver wrist ornaments she wore, and wounding her with some sharp-pointed instrument on the forehead, effected their escape. She recognized the two prisoners as the persons who had thus dealt with her. The alarm was given and a few of the villagers collected, some of whom depose also to the identity of the prisoners: but this evidence is not altogether as trustworthy as that of the prosecutrix, though it is by no means insignificant. The prisoners deny the charge and call witnesses to their plea of *alibi*, which is not made good. Were it safe to convict on recognition evidence alone, I should have felt disposed to find the prisoners guilty, as they both reside in the village where the occurrence took place, and one of them is the chowkeedar of the locality and their identification was quite possible; but this cannot be. So morally convinced am I however of the prisoners' criminality in this affair, and so unmistakably did their unruly [illegible]rderly conduct during the trial prove them to be men [illegible]us character, that in acquitting them of the charge, I considered it my duty to direct the magistrate to detain them

in custody, with labor in irons, for the space of three years in default of their furnishing security for good behaviour during that period. The magistrate was quite right to commit the prisoners.

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Case of DHOOKIRAM BAOOREE and another.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The prisoners have appealed from the order of the sessions judge, directing them to be imprisoned for the space of three years in default of security. The reason given by the sessions judge for this order is his moral conviction of the prisoners' criminality *in this affair*, namely, the crime of which they stand acquitted, and "their unruly and disorderly conduct during the trial." These are not in themselves sufficient to establish, in our opinion, criminal notoriety of such a nature as would justify a sentence under Section 9, Regulation VIII. of 1818.

The prisoners have not been previously charged with crime, nor does the record shew that they are of the class of persons referred to in Section 9, namely, persons by habit robbers, burglars, &c. We reverse the order, and direct the release of the prisoners.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

J. H. PATTON, ESQ., *Officiating Judge.*

LALLJEE AND GOVERNMENT
versus
BOOLAKEE.

Patna.

1854.

December, 15.

Case of BOOLAKEE.

Prisoner convicted of the wilful murder of a child for the sake of its ornaments, sentenced capitally.

CRIME CHARGED.—Murder of a girl, named Talloo, and theft of her ornaments, valued at Rs. 3.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 28th November, 1854.

Remarks by the sessions judge.—It appears that on the evening of the 21st October last, the prisoner Boolakee, who is shown to have been occasionally employed as a coolee, in the household of Rugbeer Singh, was playing with Talloo, the daughter of Rugbeer Singh, a child of two and half years of age, at the door of his house. The prisoner was seen to go away with the child in his arms, but no notice was taken, until about 9 o'clock at night, when Lalljee, a servant of Rugbeer, who appears as prosecutor, went out in search of the missing child. Finding only Boolakee, he had him at once arrested

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and taken to the thannah, where he confessed to having thrown the child into a well for the sake of a necklace, which he had sold to a silversmith for two rupees, and thereby raised money to pay a gambling debt, which he owed to one Kunahee. The prisoner confessed again before the magistrate as well as before this court, and the evidence of the witnesses* is quite conclusive and consistent in respect to all that the prisoner states. The body of the child was taken from the well quite fresh, and the medical officer's deposition is clear as to drowning having been the cause of death. The prisoner pleads intoxication in his defence, but this is not supported by the witnesses.† Sudden detection frightened him into confession, and he has evidently persevered in it with a hope of pardon, or of a mitigated sentence. The law officer convicts the prisoner of murder, and I concur in the finding. The case appears to me to demand nothing less than a sentence of capital punishment.

* Janiki,	No. 6.
Sero Ram,	7.
Suhoy,	8.
Chedi,	9.
Ram Sahay,	10
Chutto,	11.

† Petumber,	No. 12.
Imamun,	13.
Tajoo Khan,	14.
Nemchand,	15.
Gokool,	16.
Ramshunkur,	17.
Seddoo,	18.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner pleads guilty at the sessions, and the circumstantial evidence in every way corroborates his admissions of guilt, on his apprehension and before the magistrate.

In concurrence with the sessions judge we convict the prisoner of the wilful murder of Talloo Chokeree, for the sake of her ornaments, and sentence him, Boolakee Koeree, to suffer death.

PRESENT:

A. DICK, ESQ, SIR R. BARLOW, BART., H. T. RAIKES, AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND URJOON RAE

versus

RAMDASS.

Midnapore.

1854.

December 15.

Case of RAMDASS.

Prisoner convicted of wilful murder on evidence amounting to violent presumption, sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Rajoo Rae, the husband of witness No. 4, by assaulting him with a stick or club knotted with iron.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 21st September, 1854.

Remarks by the sessions judge.—The crime with which the prisoner is charged arose out of an intrigue. It appears that since the month of February, 1854, a close intimacy has existed between the witness, Goolkee No. 4, and her paramour, the prisoner, and that the latter had for two months previous to the 10th July, when the murder was committed, resided in the house of the deceased, Rajoo Rae, husband of Goolkee.

It further appears that the deceased had not only permitted the intrigue to go on, but had sanctioned his wife's infamy and his own disgrace by receiving money from the prisoner for not interfering. The taunts of his neighbours and the remonstrances of those of his own caste seemed to have awakened him to a sense of shame, and under the influence of such feelings he quarrelled with the prisoner, and told him to leave his house. On this, the prisoner demanded the money and other articles, which he had given him, deceased refused to comply, adding a threat that if the prisoner again returned, he would make him over to the police on a charge of theft. The prisoner then left, uttering at the same time a threat that he would have his revenge. On the evening of the same day, (viz. 10th July,) deceased, as was his custom, went to sleep in the verandah of his house, where he was the same night murdered.

The witness, Goolkee No. 4, after corroborating the circumstances of the quarrel and the prisoner's departure from the house, deposes that about midnight of the 10th July, she was awoke by the noise at the door of the room, in which she and her children were asleep, of a scuffle followed by groans; that on going into the verandah, she saw the prisoner tying up the body of her husband in the musquito curtains; she looked at it and saw that the face was covered with blood and the bridge of the nose had been broken and driven into the face, she began to

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cry, when the prisoner told her to cease with the threat of killing both her and her children, if she made a noise. She further deposes that the prisoner carried away the body and buried it in the place, where it was found by the police.

The witness No. 5, Opooroodhee, states that she was summoned by the prisoner to the house of the deceased on the night of the 10th July, where she saw the body of the deceased, Rajoo Rae, tied up in a bundle, that the prisoner desired her to assist him to carry it, that she declined to do so, when he took it up and carried it himself to a hole, which he had dug, and buried it.

The witness, Sarodah No. 7, after relating that a quarrel had occurred between the prisoner and her father, on the day before the latter was killed, states that on going into the verandah, the following morning, and seeing that the bedding and musquito curtains had been removed, inquired of the prisoner, where her father was, to which he replied he had gone away in search of a relative; that not being satisfied with his answer, she repeated the question, when the prisoner impatiently told her to go and play, threatening at the same time to beat her, if she was not quiet. She further states that she saw spots of blood on the floor of the verandah, which the prisoner endeavoured to remove by washing them over with cow-dung and mud.

The jemadar of the thannah, witness No. 3, deposes that about ten days subsequent to the murder, he fell in with the prosecutor, when he was going his rounds, who told him that Rajoo Rae had been some time missing and he strongly suspected from the circumstances he then related, that he had been murdered by the prisoner. The witness then proceeded to Goolkee's house and inquired for her husband, she at first replied that he had gone in search of a relation, but when the prisoner was arrested shortly after, she admitted that Ramdass had made away with him and could point out the spot where the body was buried. Ramdass then took the witness to the bank of a tank, where the ground was covered over with leaves, and on digging it up the body was discovered, about three feet below the surface, tied up in a musquito curtain and some body clothing. From the inquest held on the spot, it appears that the body was decomposed when exhumed, but not so much so as to prevent identity and the discovery that the bridge of the nose had been driven into the face. The body was sent into the station, but in such a state as to preclude the possibility of examination by the civil surgeon.

The prisoner throughout the investigation pleads *not guilty*, but offers no defence beyond that of implicating other parties, who, like himself, had carried on an intrigue with the witness, Goolkee.

Goolkee was in the first instance committed to take her trial

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as an accessary before and after the murder, but on looking through the proceedings, I was of opinion that her guilt extended at most to privity, and I therefore deemed it advisable, under the authority vested in this court by Section 5, Clause 2, Regulation X. of 1824, with a view to strengthening the evidence against the principal offender, to direct the magistrate to make her a witness. Her testimony was absolutely requisite to complete the chain of evidence of the prisoner's connexion with the murder, from the moment it took place. The witness, Sarodah, is a child of ten years of age, and I at first doubted her competency to be a witness; she is however so intelligent and showed by her answers that she fully appreciated the difference between right and wrong, and the consequences of telling a falsehood, that I did not hesitate to administer to her the solemn declaration. Her evidence is valuable, as it corroborates that of the chief witnesses, Goolkee and Opooroodhee, and was given with so much clearness and self-possession as to leave no doubt of its truthfulness. The weapon, with which, it is reasonable to suppose, the murderous blow was inflicted, is a bamboo club about two and half feet long, two feet are bound with rings of iron, the extremity is cased with an iron cap studded all round with sharp-cutting points about an inch long and half an inch broad. It weighs about three *seers*, is a most deadly weapon and one blow inflicted on a vital part is quite sufficient, in my opinion, to destroy life even in a buffaloe. This weapon is proved to be the property of the prisoner, which he was in the habit of carrying about with him on all occasions, and it was found in his possession, when he was arrested. There is no direct evidence that the prisoner killed the deceased, but the circumstances recorded are corroborative of the fact and justify the strongest presumption of his guilt.

The conduct of the village police and other authorities, responsible for due intimation being given to the thannah, is highly reprehensible. They appear to have connived with the principals in concealing the murder, and I have accordingly directed the magistrate to make an investigation as to how far they are implicated and to act accordingly.

The assessors declare the prisoner guilty of wilful murder. I fully concur in this verdict and seeing nothing that can be urged in extenuation, recommend that a sentence of death be passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, Sir R. Barlow, Bart., and Messrs. H. T. Raikes and B. J. Colvin.)

Sir R. Barlow.—No one saw the prisoner commit the deed The strongest evidence brought against him is that of Musst. Goolkee, the wife of the deceased, Rajoo Rae, who was herself committed to the sessions with the prisoner, her paramour. She states she saw the prisoner in the act of wrap-

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ping up the body of the deceased in a quilt and musquito curtains, in which the corpse was found some ten days afterwards buried in the bank of a tank.

A witness, Musst. Opooroodhee, swore that the prisoner carried the corpse off, also wrapped up as above described.

It appears from the record that the female is a very loose character; several of her paramours are named in this case; her husband, the deceased, paid no attention to the visits of these people to his house. The prisoner pleads that he may have met his death in some quarrel amongst them. Nothing but the clearest and most incontrovertible evidence would justify a capital sentence. I find none upon which to convict the prisoner of murder; though the depositions of Goolkee, Opooroodhee, and Sarodah, and the fact that the prisoner pointed out the spot, where the body was buried, shew that he took part in the transaction. He may have been active in the murder, but so far as the evidence on the record shews, he was seen only to take measures with the view to conceal the body by carrying it off and burying it. I would convict the prisoner of being accessary after the fact, and sentence him to seven years' imprisonment.

Mr. B. J. Colvin.—I do not think that the capital sentence can be remitted in this case. The murder is clearly brought home to the prisoner by his pointing out where the body was buried. The corpse was recognized as that of the deceased by the widow. The quilt, &c., with which it was covered, were proved to be his, and the prisoner was seen next day trying to efface the marks of blood from the verandah. He may not have been alone engaged in the act, but that he was a principal in it there can be no doubt. The fact of ill-blood between him and the deceased is also clearly established, to which may be ascribed his commission of the crime.

Mr. A. Dick.—The testimony of the abandoned widow of the deceased I would reject as utterly worthless. There is strong reason to believe that she was an accomplice in the murder. She repeatedly declared after his murder, that her husband had gone away to see a relative. She continued to receive the visits of the prisoner, whom she now charges with the murder, and she was the first to tell where the corpse was buried. The testimony of the witness, No. 5, Opooroodhee, is almost as worthless. The prisoner could not alone have carried the body to the place of interment.

The evidence of the prosecutor, of the child Sarodah, and of the person from whom the prisoner borrowed the *koodalee,* and the conduct of the prisoner in joining with the widow, Goolkee, in the statement that the deceased had gone away to see a relative, his concealing himself when the jemadar came to inquire into the murder, and lastly his pointing out the place of interment, and his own refutation by his conduct in hiding himself,

of his answer at the thannah, which he declared to be all true, raise a violent presumption that he murdered the deceased. I therefore concur with our law officer, and would convict the prisoner of murder on violent presumption, and sentence him to transportation for life.

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I cannot concur in passing a capital sentence, as the conviction rests solely on circumstantial evidence.

Mr. H. T. Raikes.—I agree with Mr. Dick, that the circumstantial evidence justifies a violent presumption of the prisoner's guilt, and I would sentence him to imprisonment for life in transportation.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT

versus

SHEIK KEENAH.

Mymensingh.

1854.

December 15.

Case of SHEIK KEENAH.

When a charge of perjury is based upon contradictory statements on oath, such statements must be recorded in the same case.

CRIME CHARGED.—Perjury in having on the 7th July, 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before Mr. S. F. Davis, joint-magistrate of Serajgunge (in a case pending before him regarding a cow) that he sold the cow to Seedam Soot for 2 rupees 8 annas, and that he, Seedam Soot, kept the cow at the house of his concubine, Ranee Bewah, and in having on the 21st March, 1854, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before Baboo Raj Chunder Chuckerbutty, late moonsiff of Serajgunge (in a suit regarding the same cow) that his mother sold the cow to Ranee Bewah for 2 rupees 8 annas, that he was a minor at the time and that he heard of this circumstance from his mother, such statements being contradictory to each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 2nd November, 1854.

Remarks by the sessions judge.—The circumstances of the case are fully recorded in the charge; it will therefore be sufficient to state that it having come to the knowledge of Baboo Raj Chunder Chuckerbutty, late moonsiff of chowkee Serajgunge, that the prisoner (in a suit regarding a cow before him) having deposed on oath contrary to what he had stated before Mr. S. F. Davis, joint-magistrate of Serajgunge, (a copy of the deposition being filed with the *nuthee*,) in a complaint regarding the same cow, he summoned the prisoner, when he admitted that what he had

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deposed to before the joint-magistrate was correct, and that the evidence given by him in the moonsiff's court was false, which he deposed to at the instigation of Ranee Bewah and others by threats and promises. The moonsiff accordingly sent him to this court and he was forwarded by me to the magistrate, with a view to his being committed to the sessions. In this court, the prisoner urged that he did not recollect what he had deposed to as he is now afflicted with a sickness which affects his memory, but declined to examine any witnesses to defence.

The law officer found the prisoner guilty of the charge, in which I concurred. The evidence of the witnesses (omlahs of the moonsiff's court) shows that what the prisoner had said was all that was recorded, and although the deposition of the writer of his evidence in the foujdary was not taken, still one of the omlahs of the moonsiff's court, who made transcript from the original for the purpose of filing it with the *nuthee*, deposed to the truth and accuracy of the copy.

Sentence passed by the lower court.—To be imprisoned for the period of three (3) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court observe that the contradictory statements, on which this charge is based, were not made in the same case, but in two separate cases. The principle of Circular Order, dated 18th June, 1841, is to do away with the necessity of proving which of two contradictory statements is the false one, for one of them must necessarily be false and therefore when both are given in the same case, perjury has of course been committed in that case; but if given in two separate cases, it is impossible to say in which there is perjury. The contradictory statements upon which any conviction of perjury can be had under the Circular Order, must therefore be recorded in one case, so that one shall be false on a point material to the issue of the case in which the witness is giving his testimony, when he contradicts himself. We therefore acquit the prisoner of the charge and direct his release.

Additional note by Mr. Dick.

In the present instance, it is impossible to know from the mere contradiction in the two depositions, in which of the two cases, the perjury was committed. Now the law, Clause 1, Section 4, Regulation II. 1807, declares the crime of perjury to consist in "*giving*" a false deposition, &c., therefore the perjury must be in a case *pending*; for the law being penal, must be construed strictly. Proof should have been required to establish the last deposition to be false; and then the accused might have been committed for the false deposition given in the last case, pending; and the former contradictory deposition would have been strongly corroborative evidence of the falsity of the latter testimony.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT AND NIMCHAND CHOWKEEDAR

versus

MOGAL GHOSI (No. 1.)

Bhaugulpore.

1854.

December 15.

Case of MOGAL GHOSI.

Prisoner charged with wilful murder acquitted, owing to the insufficiency of the evidence.

CRIME CHARGED.—Wilful murder of Musst. Moorti.

Committing Officer.—Mr. W. F. Tucker, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 1st November, 1854.

Remarks by the sessions judge.—Prisoner pleads *not guilty.*

Prisoner is a large powerful man of very forbidding aspect, appears about 30 years of age. Deceased had left her own husband to live with him, had two children by him, was a young healthy woman. He was in the constant habit of beating her. Witnesses, Nos. 1, 2, 3 and 4, depose to having seen him on Saturday (the 22nd July,) quarrelling and beating her with his fists and a thick stick for some hours in the yard of their dwelling, about three in the afternoon he is said to have dragged her into the house. It is also stated that the next day he told several of the neighbours she was dead, but would not let any one enter the house, himself sitting at the door with all the preparations for burning the body about him and telling the by-standars, who had assembled in large numbers, that if his own caste-people would not assist in the burning, he would bury the body where it was, *vide* deposition of Nimchand prosecutor. Intelligence had, in the mean time, been conveyed to the chowkeedar, who came to the spot, and apprehending prisoner, took him to the thanna. The police immediately repaired to the house, brought away the corpse and held an inquest on it, in presence of witnesses, Nos. 7, 8 and 9, of which the following statement drawn up at the time (23rd July,) by the darogah was the result.

The body was much swollen and bloody about the nose. An abrasion above the right wrist; A ditto above the right knee; marks on both wrists, as if from binding.

Musst. Jhebe Domin (not in the calendar, but called by the court on account of mention made of her in the thanna inquest) deposes to the region of the anus having been much swollen, but cannot say from what cause. Dr. Collins (also not included in the calendar, but summoned by the court to give evidence as to the state of the body when he saw it) deposes to its being much more decomposed than was possible, if dead only 24 hours.

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The prisoner in his defence at the thanna (23rd July,) said that Moorti had died from bite of some venomous insect, that on the night of Friday the 21st, she came in from relieving the wants of nature and said something had bitten her; on the night of the 23rd, she died. Before the magistrate he stated that Moorti was not his wife; that he had come from the cutchery and was standing under a tree, eating some dry grain, when he saw Shibdyal and Kungali and Musst Bhugwattee preparing to take Moorti away to burn, when the jemadar and burkundazes of the thanna came and apprehended him. Before this court he says that he was proceeding from the magistrate's cutchery along the road, when he met the darogah with a number of men and women of his caste with a dead body; that he was seized and beaten and wrongfully accused; that the darogah took money from those better off to release them, but kept him a prisoner.

Of the witnesses named for the defence, one only was called by the prisoner. Alli Hussun No. 14, deposes to having sometime previously seen prisoner in the magistrate's cutchery with two small children in his arms begging, that he gave him a pice, he denies having seen him on the day named as that of the murder.

The other witness named in the calendar Settal Moodee, No. 13, deposed to the prisoner having come to his shop, late on the night of Saturday, the 22nd July, and begged for some food for his children, saying their mother was lost or missing.

The jury bring in a verdict of guilty of the crime charged, in which I concur, and would convict the prisoner on violent presumption of the murder of Musst. Moorti.

In this case, there is great reason to doubt the evidence of the so-called eye-witnesses, their confessions are tolerably clear and consistent, but are so distinctly opposed to the fact of the state of the body on the day following, as proved by the civil surgeon, that I cannot believe them to have seen what they swear to having seen on the day they say they did, but while disbelieving that they saw deceased alive and her husband maltreating her on the 22nd of July, I am inclined to believe the general account they give of his conduct to her and others. There is no doubt that this woman who lived with him as his wife died in his house, and that he concealed the fact from his neighbours till it was brought to light, probably by the stench of the dead body, the accounts he gives of her death and of himself are contradictory and suspicious. Weighing all these considerations and the notorious bad character of the prisoner against the proved falsity of the principal witnesses for the prosecution, I come to the conclusion, on circumstantial evidence only, that he is guilty of the murder of the woman by blows and bad treatment, and with reference to former precedents, where

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conviction has been arrived at on violent presumption only, would recommend that he be sentenced to transportation for life.

Having thus, separating to the best of my ability truth from fiction and fact from rumour, come to a general conclusion of the guilt of the prisoner, Mogul Ghosi, I must say a few words as to his character, which, though notoriously bad, has never before come under suspicion of any but petty crimes; he has been nine times before the magistrate since 1849, on various charges of petty assault, resistance of process, throwing stones, and cattle trespass, always alone; in all he was convicted and fined or imprisoned, the highest fine imposed was 20 Rs. or two months' imprisonment, he has been four times called on to give security for general behaviour, twice I find security was furnished, the third time the result does not appear from the papers before me. The fourth time I ordered his release on appeal as noted in the magistrate's calendar in the column of abstract grounds for commitment. This last case has some curious features which, as connected with the man's character on which I consider his fate mainly to depend, I must here shortly allude to.

He was found grazing his cows on forbidden ground and summoned before the magistrate through the police; on attendance he was released on his own recognizance to amount of 50 Rs. and being put on his defence denied the trespass and said he had *no cows or cattle of any sort*, but lived by labor, this was on the 9th August, on the back of this record is the magistrate's order, dated the 3rd of September, declaring the recognizance forfeited for non-attendance and ordering sale of Mogul Ghosi's property in realization. On the 17th September, the darogah reported realization from sale of *two cows* and a house, and paid the money into court. On the 9th of September, the magistrate decided the case of trespass and sentenced Mogul Ghosi to fifteen days' imprisonment with 15 Rs. fine in lieu of labor, with order to jail darogah to produce him at the close of that period for further orders.

On the 24th, the jail darogah reported the expiration of the fifteen days' imprisonment, and the magistrate on the same day ordered the police to report on means of livelihood and general habits and character. The report stated that though there was no actual crime attributed to Mogul Ghosi, neither theft nor *budmashee*, yet he was known as a turbulent, riotous evil-disposed and drunken character,* and that the neighbors were all much afraid of him. On this, the magistrate, because he had no ostensible means of livelihood, called on him for security in default of which he was to suffer one year's imprisonment. This order, I

* *Tukraree, dungabaz, budmoozunnee, budwuzu, zalim, nishakhor.*

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upset, quoting the Court's Circular No. 9 of the 26th of September, 1828.

The Court will thus see exactly what there is against the prisoner apart from this case, and will also perceive how far his notoriety of character has already led to rather harsh measures being taken against him, his recognizance was, it seems to me, rather summarily declared forfeit, and then when all his property had been sold, he was sentenced to a year's imprisonment "because he had no ostensible means of livelihood." There is no doubt however whatever that this character was deserved, and that the whole neighborhood lived in fear of his violence and reckless habits of dissipation and excess, satisfied always at the expence of those who were too timid to refuse his demands.

It only remains, with regard to the evidence of the so-called eye-witnesses, to state my belief that it was made up by the police to strengthen a case which without it must have rested entirely on circumstantial evidence. The readiness with which the witnesses entered into the scheme is attributable to the hatred and fear of the prisoner, shared in equally by all his neighbors. The failure of this evidence would, in the case of a prisoner of good character, have left much room for doubt, even under the circumstances of concealment and prevarication I have mentioned in the early part of this report. In the present case, I see no cause to stay conviction, but have entered thus at length into the prisoner's late history to enable the Court also to see clearly and thoroughly on what grounds I have rested my decision, and at the same time all there is in favor of the deceased. Grave notice should, I think, be taken of the conduct of the police in the matter of fabricating evidence for the occasion.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We cannot concur in this conviction. The evidence of the medical officer shows that when he examined the body, the 23rd July, decomposition had so far advanced that he failed to ascertain the cause of death, but was clearly of opinion that death had ensued at an *earlier* date than that stated by the witnesses, who deposed to having *seen* the assault and violence on the previous day (22nd July) to which the deceased's death is attributed. The evidence of Mr. Collins also goes far to throw discredit on the mofussil inquest, which stated that marks of violence had been observed on the body. We agree with the sessions judge that under these circumstances no reliance can be placed upon the evidence of those who describe themselves as witnessing the assault, and we moreover observe that these same parties, though questioned by the darogah at an early stage of the inquiry, did not disclose their knowledge of this fact until the 31st of July, the date on which he closed the investigation. This therefore reduces the proof against the

prisoner to the solitary fact of his having concealed the deceased's death at the time of its occurrence, but there is no circumstantial evidence on which to found a presumption as to how and when that death occurred, or to lead us to more than a suspicion of the prisoner's connection therewith. As the charge appears to us not proven, we acquit the prisoner and direct his release.

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Case of MOGAL GHOSI.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND HURSOONDREE DASSEEA

versus

CHYTUNNO CHURN MUZOOMDAR.

Rajshahye.

1854.

December 16.

Case of CHYTUNNO CHURN MUZOOMDAR.

Prisoner convicted of the wilful murder of his nephew, sentenced to transportation for life, there having been no previous ill-will between the parties and the fatal weapon having been close at hand.

CRIME CHARGED.—Wilful murder of Juggut Chunder Muzoomdar.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 25th October, 1854.

Remarks by the sessions judge.—The reason for this reference is that the *futwa* convicts the prisoner of the murder charged, and concurring in the conviction, the sentence rests with the Superior Court.

The circumstances of the case, as elicited in evidence, are simply as follow. The prisoner and deceased were relations, the former being great uncle to the latter. There was some dispute relating to some *bamboos*, which had been rented by *ryots*, and these the prisoner wanted to appropriate to himself, and brought his servant to cut them, an altercation ensued and the deceased being taunted with being a fool, retaliated, insinuating the prisoner was not over-wise. Exasperated at this language of his nephew, the prisoner took up what is called by the witnesses a *mugoor*, and which is a heavy piece of bamboo with a handle used as a mallet to drive the *dao* or wedge into a *bamboo*, when it has to be split up, with this he began to beat the deceased about the head and face, till he fell down insensible and till two other men, who were on a tree, descended when he ran away, throwing down the *mugoor* in the path where it was afterwards found by the *chowkeedar*. The deceased was then taken to the nearest house, and, after a *sooruthal* held by the darogah, was about to be sent into the station, when he died.

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The deceased's aunt, who was co-prosecutrix with the Government, deposed to the deceased leaving her house perfectly well, and to her afterwards hearing of his being wounded by the prisoner.

When called upon to plead, the prisoner began to look out of the window, and pretended he did not understand what was asked. He was told this would not do, and after some time denied killing the deceased, when a plea of *not guilty* was recorded.

Witness, No. 1. deposed he was sitting at the house of Kisto Dolal Roy with the deceased, when witness, No. 2, who was the prisoner's servant, came there with a *koral* and rope. The deceased asked him why he cut his *bamboos* that had been given by him and his uncle, Kallee Churn, to *ryots*. The witness replied he was only a servant, and bound to do what he was ordered to do. The prisoner then came, when deceased addressed him, saying, uncle, why do you cut my bamboos. The prisoner replied, he should keep the bamboos and not give them to the *ryots*. Words then passed between them, and while wrangling, Bowul and Seetul, witnesses Nos. 2 and 3, got up into a mangoe tree to cut a dry branch. The prisoner then abused the deceased, who remarked that if he was a fool, he was a great *pundit*. The prisoner on this said, if it was his house he would show him. Deceased rejoined, you are five brothers and I am alone. The prisoner on this laid hold of the *mugoor*, and began to beat the deceased on the head and face, the witness not interfering till he fell down, and on the two men on the tree coming down the prisoner ran off.

Witness, No. 2, *and witness, No.* 3 confirm the statement of the first witness, but do not speak to what was the cause of the assault, and, as they were occupied in getting down from the tree, they only saw one blow inflicted on the deceased, but there were several marks on his head. The third witness, Seetul, also heard the deceased say he was not a *pagul* though his father was. The *mugoor* was in the enclosure, or compound, where they were; and the one produced at the trial all three witnesses recognized as the one with which the wounds on the deceased had been inflicted, weighing one *seer* and fourteen *chittacks*, or nearly four pounds.

There was no *sooruthal-lash*, or inquest after death, but the *sooruthal* held before the deceased's death on his wounds, having been attested, it has been filed with the record. The deceased at the time it was written only breathed and could not speak.

Mr. Ellis, the sub-assistant surgeon, deposed that he had examined the body of the deceased and that he died from compression of the brain, caused by a fracture of the skull and

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effusion of blood, giving full details and his deposition being in English, I need not repeat them here. He was directed to watch the prisoner, after he was sent to the jail, and in his opinion he was feigning madness and was not mad when first made over to him as a patient. To a question by the law officer, he stated that a person, who had some years before been mad, might again become so.

The three eye-witnesses, Nos. 1, 2 and 3, deposed that the prisoner was not mad at the time, and they never knew of his being so. That he did not smoke *ganja*, but the deceased's father did and was mad, and on this account had not been put forward as prosecutor.

Witnesses, Nos. 8 *and* 10 deposed that about twenty years ago, the prisoner had been mad and confined in *chains* on this account.

When called upon for his defence, the prisoner said he had none. He then appointed some mookhtears, signing the *mookhtearnamah* in my presence. Nearly all the witnesses brought forward to his state of mind (by his relations it is to be presumed) the prisoner examined, attending with great earnestness to what they said, and scratching his head when the answer was not a favorable one.

Twenty-six witnesses were examined, and all they proved was that the prisoner had been mad twenty years before, and had once struck his wife with a *dao*. It was attempted to be proved that he had threatened to strike his father, but this was not established.

On the usual question being put to the law officer, he replied that wilful murder was proved and in his *futwa* repeats this, but declares *kissas* barred, as the prisoner was before mad, and the sub-assistant surgeon had deposed that madness might return. He was only liable therefore to *acoobut*.

I think there can be no matter of doubt that the prisoner murdered his grandnephew in a sudden fit of passion with the *mugoor* produced in court, and which again was a *lethal* weapon. This, however, was unfortunately close at hand, and thus available for the commission of the fatal assault, terminating in the death of his nephew next day, and who was speechless from the time the blows were inflicted. Leaning on the side of mercy and adverting to the fact of the prisoner's previous insanity, I concur with the law officer that the case does not call for a capital sentence, and if it be commuted to imprisonment for life, I would likewise suggest that it be in the Alipore jail, and *without labor*. As it is not improbable his madness may return, and I have known of cases of prisoners, who had before been mad, becoming so again from the gibes and ill-feeling remarks of their associates in jail.

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With this opinion,* I beg to leave the prisoner's case in th hands of the Court, trusting they will take a merciful vie of it. He must be full fifty-three (the age put down in th calendar) though a hale-looking man.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Ba low, Bart., and Mr. H. T. Raikes.) There can be no doubt tha the prisoner killed the deceased, as described by the sessions judg in his letter of reference. There is no proof whatever that th prisoner was at that time of unsound mind. On the contrary, i is established by the evidence of the prisoner Sewait and tw other eye-witnesses that the prisoner, on the occurrence of som words of abuse between him and the deceased, seized a *mugoo* or short club four pounds in weight, knocked him down, and o his rising repeated the blow again, felling him, he then inflicte two or three more blows on his head and caused a fracture c the skull, which ended in the death of the deceased early nex day.

In the absence of previous ill-will and in consideration of th act having been done in the impulse of the moment, with weapon which was close at hand, we convict the prisoner c murder, but sentence him only to imprisonment for life i transportation. Some of the witnesses have spoken of th prisoner having been insane some twenty years ago, his condu however before the police and the courts on his trial, and th consistent defence he has throughout made, with the opinion c the medical and criminal authorities recorded in the trial satisf us that the plea is merely put forward by his relatives an friends, in order to relieve the prisoner of the responsibility whic he has incurred in consequence of his act, but this evidence cannot be relied o

PRESENT:
SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT
versus
MUSST. LUKHEEA.

Tirhoot.
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December 16.

Case of MUSST. LUKHEEA.

Prisoner charged with perjury arising out of two contradictory statements on oath acquitted, her second statement having been taken unnecessarily, when proof was available of the falsehood of the first.

CRIME CHARGED.—Perjury, in having in a case of wounding, in which she was prosecutrix, deposed before the joint-magistrate on a solemn declaration, taken instead of an oath, on the 7th June, 1854, "that Bheeka cut off her nose, whilst her husband, Burhoo, held her hands," and again on the 9th July, 1854, deposed before the joint-magistrate, on solemn declaration, taken instead of an oath, that Burhoo, her husband, had cut off her nose, and that Bheeka had nothing to do with it, and that she had implicated Bheeka from motives of enmity, these statements being contrary to each other on a point material to the issue of the case.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before Hon'ble R. Forbes, sessions judge of Sarun, on the 19th August, 1854.

Remarks by the sessions judge.—In compliance with the Superior Court's Order* No. 996, of the 17th instant, and conformably to Clause 3, Section 9, Regulation XVII. of 1817, I have the honor to submit the proceedings held on the trial (No. 8, of sessions of zillah Chumparun for August last) of the prisoner marginally named for the final orders of the Nizamut Adawlut.

Musst. Lukheea.

It appears from the record of trial, No. 7, of sessions for zillah of Chumparun, for the same month, that the prisoner's husband one "Burhoo" was tried, convicted and sentenced for the crime of cutting off his wife's nose, in revenge for her marrying another man after he had deserted her for about three years, and the prisoner, Musst. Lukheea, after her nose had been cut off, first lodged a complaint at the thannah charging one "Bheeka" with the commission of that offence, and when her deposition as prosecutrix was taken down on solemn declaration instead of an oath before the joint-magistrate of Chumparun, on the 7th June last, she also accused the said Bheeka of having mutilated her. In consequence, however, of her husband Burhoo having admitted while the accused Bheeka, when examined, denied having cut the woman's nose; after due inquiry through the police and the evidence of the witnesses had substantiated the guilt of Burhoo and the innocence of Bheeka, the prisoner

* Not necessary to be printed.

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was again examined on solemn declaration instead of an oath on the 19th July last, when she deposed that her husband Burhoo had cut off her nose, and that Bheeka had nothing to do with it, she having implicated the latter from motives of enmity. As the two statements were contradictory to each other on a point material to the issue of the case, the joint-magistrate examined the prisoner as a defendant, when she voluntarily confessed before attesting and subscribing witnesses (Nos. 1 and 2) that she had perjured herself, to which effect she likewise confessed in this court, pleading in her defence that though she was certainly guilty, yet that she had been sufficiently punished by the cutting off of her nose.

In the *futwa* of the law officer *(tazeer)* which convicts the prisoner of the crime charged, and with reference to Construction 233, I concur, and I have accordingly recorded against her the minimum legal sentence within the competence of this court, but without labor, as the prisoner appears weakly. Taking into consideration, however, that personal injury sustained by the prisoner by the loss of her nose, involving disfiguration for life, I beg to recommend that the sentence recorded may be mitigated to imprisonment for six months without labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The prisoner swore that one Bheeka cut off her nose. During the trial, her husband Burhoo admitted that he had done it and was committed on the 19th July 1854, and eventually convicted and sentenced accordingly. The prisoner was on the same day, the 19th, put on her oath, when she admitted that Bheeka had nothing to do with it and that her husband was the guilty person.

Upon this she was made a defendant and charged with perjury, the statements on oath being contradictory to each other on a point material to the issue of the case. The prisoner should not have been examined on oath the second time, and then committed upon charges arising out of that deposition. The proper course for the magistrate was to have proved by the evidence on the trial of Burhoo that the prisoner Lukheea had, in the first instance, committed perjury in accusing Bheeka and a charge of perjury, on that first deposition, proved to be false, should have formed the grounds of indictment against her. As it is, the prisoner has been put on her trial upon contradictory statements on oath, the last having been made when the trial of her husband had already furnished proof of her guilt on her first examination, after which an oath should not have been administered to her. We acquit the prisoner and direct her immediate release.

PRESENT:

SIR R. BARLOW, BART., AND H T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND BHOLAI BEARER
versus
ABID BEARER.

Dacca.

1854.

December 16.

Case of ABID BEARER.

Prisoner convicted of wilful murder, sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Ayazooddeen, son of Bholai Bearer, prosecutor.

Committing Officer.—Mr. H. C. Raikes, officiating joint-magistrate of Furreedpore.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 15th November, 1854.

Remarks by the sessions judge.—The prosecutor was informed that his son had been killed by the prisoner, and on going to the house of the latter, he found the deceased wounded in such a manner, as to cause death a few hours afterwards.

There were no eye-witnesses of the murder, but a number of the neighbours, who assembled on the alarm being given, deposed* to having seen the deceased before death, lying in the house of the prisoner, and three of these, Nos. 8 to 10, also stated that the prisoner had admitted having killed the deceased.

* No. 4, Erman.
,, 5, Tota Bewah.
,, 6, Oseemooddeen.
,, 7, Golamee Bearer.
,, 8, Munsoor Bearer.
,, 9, Asruff.
,, 10, Tazooddeen Meah.

The wife of the prisoner, Erman, (witness No. 4,) said deceased had attempted to violate her, but from the description given of the house, this is highly improbable.

The prisoner made no reply at the thannah, before the magistrate he pleaded that he was occasionally insane and did not know what he had done, then said he had found deceased with his wife, and in this court pleaded *not guilty*, denying all knowledge as to how deceased came by his death. He called no witnesses.

The law officer found the prisoner guilty and adjudged him liable to death by *kissas*.

I consider the crime of murder proved against the prisoner, although there are some discrepancies in the evidence, and it is doubtful whether the wounds were inflicted by a *tenta* (a three-pronged barbed fish spear) which was not produced in court. The prisoner's plea of insanity, put forward in the *foujdary*, is totally disproved, but from the deposition of the witnesses,* Nos. 6 to 10, and the admission of the wife of Erman (No. 4,) I think it proved that jealousy was the cause

* No. 6, Oseemoodeen.
,, 7, Golamee Bearer.
,, 8, Munsoor Bearer.
,, 9, Asruff.
,, 10, Tazooddeen Meah.

1854. of the murder, and that the deceased carried on a criminal int course with the prisoner's wife.

December 16. Had there not been this to urge in palliation of the crime would have proposed a capital sentence, but under the circu stances, would recommend that the prisoner be transported f life, with labor and in irons.

Case of ABIDBEARER.

Remarks by the Nizamut Adawlut —(Present. Sir R. Barlo Bart, and Mr H. T Raikes) The circumstances, proved on t record, fully justify the sentence proposed to be passed on t prisoner by the sessions judge, which we therefore confirm

PRESENT:

SIR R. BARLOW, BART, *Judge*

J H. PATTON, ESQ, *Officiating Judge*

GOVERNMENT

versus

AMIRTO DOSS

Moorshedabad.

1854.

December 16.

Case of AMIRTO DOSS.

The prisoner was convicted by the sessions judge of severely wounding and sentenced to seven years' imprisonment. In appeal the Court held that the prisoner was of unsound mind and found a special verdict under Act IV. of 1849

CRIME CHARGED —Wounding Nuddea Doss, with intent t murder

CRIME ESTABLISHED —Severely wounding Nuddea Doss.

Committing Officer —Mr C. F Carnac magistrate of Moorshedabad.

Tried before Mr D J Money, sessions judge of Moorshedabad, on the 16th September, 1854

Remarks by the sessions judge – On the night of the 26th May last, Nuddea Doss was sleeping in the veranda of the prisoner's house, when the latter caught hold of the former by the hair and with a *kadia* (a kind of sickle) cut his throat. Nuddea Doss awoke and caught hold of the sickle with his hand, which was also cut, the prisoner gave him two or three strokes more on the neck, when Nuddea Doss cried out and Khettro Mundle and Kassee Mundle came to the rescue and arrested the prisoner

The prisoner confessed both before the darogah and the magistrate. From the evidence of Nuddea Doss, Khettro Mundle and Kassee Mundle as well as his own confession, it was clearly proved that the prisoner wounded Nuddea Doss with the sickle. The mark upon the neck shewed that the wound was of a severe nature, but it did not appear that there was any provocation for such an act Some of the witnesses deposed to the prisoner having been once, some four years ago, insane, and that he has since then been some times seen to labor under the

1854. December 18. Case of Amirto Doss.

influence of mental derangement, but from the month of Maugh last, that he was much better.

In his deposition the officiating civil surgeon declared that the prisoner was not insane. It appeared to me, however, necessary, under the peculiar circumstances of the case, that the prisoner should be further examined by the doctor before I passed any sentence in the case, and I directed the magistrate to keep him under proper guard in such place as might, consistent with safety, secure the constant inspection of the civil surgeon. The prisoner was accordingly placed under the inspection of the officiating civil surgeon from 31st August to 11th September, and on the 15th of September, the officiating civil surgeon, in his deposition before me, again declared that he did not think the prisoner was of unsound mind.

The prisoner is the uncle of Nuddea Doss, and it does not appear that there ever existed any enmity between them, on the contrary they are supposed to have been great friends.

The assessors, who aided me in the trial of the prisoner, were of opinion that he wounded Nuddea Doss, while laboring under unsoundness of mind. In this finding I differed, and although there was some thing all along suspicious in his manner and appearance, still considering him from the evidence of the surgeon to have been of sound mind when he committed the deed, I sentenced him as stated in the proper column. The absence of motive, the suddenness of the act, the good terms on which the prisoner lived with Nuddea Doss, were all against the presumption that the prisoner intended to take his life.

Sentence passed by the lower court.—To be imprisoned for the period of seven (7) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. H. Patton.) The principal, indeed the only, ground upon which the sessions judge comes to the conclusion that the prisoner was of sound mind, when he committed the offence with which he is charged, is the deposition of the medical officer, but that evidence is not quite satisfactory on the point of the prisoner's sanity. It is derived from observation of the prisoner's conduct subsequent to the offence, not at that time.

The prosecutor and the witnesses state the prisoner had been before of unsound mind, and that he occasionally is affected by fits of insanity. No cause whatever is assigned for the deed, and the judge himself as well as the police, who held the local investigation on the spot, appear to be of opinion that the prisoner is insane. The argument used by the sessions judge that absence of motive, the suddenness of the act, the good terms on which the prisoner lived with Nuddea Doss, are against the presumption that the prisoner intended to take life are equally of force against the supposition that he attacked Nuddea, knowing at the time what he was doing. Nuddea is the prisoner's relative,

1854.

December 15.

Case of AMIRTO DOSS.

and no difference existed between him; on the contrary, they were friends, and the act was done on the impulse of the moment, without any apparent cause. We acquit the prisoner, finding that there is good reason to believe that he did the act charged against him being then of unsound mind, so as to excuse him according to law, and direct that he be kept in safe custody by the magistrate in the zillah jail until the pleasure of the Government can be known thereon, under the provisions of Section 3, Act IV. of 1849.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

J H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

JAMALDEE SIRDAR (No. 47, APPELLANT) RUHUMUT MUNDUL (No 48,) ASMUT PRAMANICK (No. 49,) SAKEERAH CHOWKEEDAR (No. 50,) RYEMUL SIRDAR (No. 52.)

Rungpore.

1854.

December 22.

Case of JAMALDEE SIRDAR and others.

Prisoner convicted of riot with culpable homicide sentenced by the sessions judge to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—Riot attended with the culpable homicide of Ajeem Pramanick.

CRIME ESTABLISHED.—No. 47, riot attended with culpable homicide and Nos. 48, 49, 50 and 52, being accomplices of the said crime.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. William Bell, sessions judge of Rungpore, on the 29th July, 1854.

Remarks by the sessions judge.—Jamaldee Sirdar, prisoner No. 47, had obtained a decree in the moonsiff's court against prosecutor and his brothers, and, on the morning of the 27th February last, went with about fifty men to execute it. The peadah, entrusted with the warrant, was left at some distance from prosecutor's house, where the others arrived very early in the morning and seized prosecutor's brother, witness No. 1, who had just issued from his hut The occurrence was observed by, among others, the deceased, Pramanick, nephew of witness No. 1, who began calling loudly for aid to silence him. Elamdee, prisoner No. 2, of calendar No. 2, in case No. 16, desired Jamaldee Sirdar, prisoner No. 47, to *mar* him, and this the latter did,

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Case of JAMALDEE SIRDAR and others.

striking deceased first on the body several times with a *lattee* and then on the head; on receiving the latter blow, deceased staggered a few steps, fell and died in a couple of hours afterwards. From the medical evidence it appears that there was no external wound on the scalp, but that a severe blow had been inflicted on the head, by which the skull was fractured about six inches, which fracture was the cause of death. The fact of prisoner, No. 47, Jamaldee Sirdar, having struck the blow, which killed deceased by order or desire of Elam Sirdar, prisoner No. 2, of calendar No. 2, in case No. 16, is clearly proved by witnesses Nos. 3, 4, 5 and 6, exclusively of Nos. 1, 13 and 14, prosecutor's brothers, and prisoners, Nos. 48, 49, 50 and 52, of Calendar No. 12, in case No. 15, and No. 3, of calendar No. 2, in case No. 16, are proved to have been accomplices, having been recognised by at least three witnesses each, exclusive of prosecutor's relations, as present in the gang, which accompanied the prisoners, Nos. 47 and 2, armed with *lattees*. The prisoner, No. 47, in his defence alleged that he had simply pointed out deceased to the moonsiff's peadah, who apprehended him and that deceased died of disease, his defence is utterly unsupported by the witnesses called by him. The other prisoners plead *alibis*, but their witnesses quite fail in the attempt to prove them.

The law officer convicted Jamaldee Sirdar on the charge mentioned in the calendar on full legal proof, No. 2, of being an accomplice, instigating the offence, and Nos. 48, 49, 50 and 52, of calendar No. 12, and No. 3, of calendar No. 2, of being simply accomplices, and I concurred, and not considering there was any premeditated intention of taking life, but that the prisoners were engaged in attempting to make an illegal arrest in consequence of which the homicide occurred, I sentence them as mentioned.

The prisoners were committed in two calendars, some having been apprehended long after the others, but I tried them all at once, the charge, witnesses, &c., being one and the same in both calendars.

Sentence passed by the lower court.—No. 47, imprisonment with labor and irons for seven (7) years and Nos. 48, 49, 50 and 52, each to be imprisoned without irons for one (1) year and to pay a fine of (30) thirty Rs., on or before the 28th August, 1854, or in default of payment to labor, until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We see no reason to discredit the evidence of the witnesses, who speak directly to the fact of Jamaldee, the appealing prisoner, having struck deceased on the head with a *lattee*, and the prisoner admits having gone to the deceased's house, as stated by the witnesses, to execute his decree against his (deceased's) uncle, and his assertion that the deceased

1854. December 22. Case of JAMALOODEEN SIRDAR and others.

died from disease is completely refuted by the evidence of the medical officer, who made the *post mortem* examination, from which it is clearly apparent that the deceased died from a fracture of the skull. We see no reason to interfere with the conviction and sentence, and reject the appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

RAMTUNOO MUNDLE.

Jessore.

1854. December 22. Case of RAMTUNOO MUNDLE.

Prisoner convicted by the sessions judge of perjury, acquitted in appeal, there being no direct contradiction in the statements charged.

CRIME CHARGED. Perjury, in having, on the 24th of June, 1854, corresponding with 11th Assar, 1261, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the joint-magistrate of Khoolna, that on hearing from his house the noise of a cry made by Peari, he went out to the house of the defendants and saw that the prisoner, Ishur Sirdar (present) after shutting up the eastern door of his house, was beating Peari, whilst Babooram Sirdar and Punchomee Chundalini, who were outside their house, were giving orders from the yard of their house to beat her, also that he saw a mark of a wound on the left leg of Peari at the time when Babooram brought her out of the house by taking hold of her shoulders, and that he then found Issor Sirdar, who had come out of the house, armed with a *lattee;* and, in having, on the 29th August, viz., 14th Bhador, 1261 B. S., again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Jessore that on hearing Peari Chundalini cry out from the house of Babooram, he went to Babooram's house and asked him whether he had beaten her, on which he answered that as his honor or disgrace depended on her only, he was at liberty to punish her in any way he chose, and that when Babooram dragged her out of the house by holding her shoulders, he did not then see attentively whether she had any mark of violence on her or not, but he returned to his house, and that he himself did not see the assault, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 25th October, 1854.

1854. December 22. Case of RAMTUNOO MUNDLA.

Remarks by the sessions judge.—Perjury, the crime charged is clearly proved from the evidence for the prosecution.*

The statements of the prisoners are contradictory of each other on a point material to the issue of the case.

The jury give a verdict of guilty, in which I concur.

I sentence the prisoner to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We see no such direct contradiction between the two statements as can constitute a charge of wilful and deliberate perjury. The first statement of the prisoner, as to seeing the assault when the door was shut, must be taken to mean that what fell under his observation convinced him that Ishur Sirdar was beating the woman inside the house, and his second statement is merely to this extent. His not detailing the particulars, with the same minuteness, in his subsequent examination before the sessions court is explained by him as proceeding from forgetfulness. There is no contradiction at all, nor any failure on the part of the prisoner to give substantially the same evidence he had previously offered in the foujdary court. We acquit the prisoner and direct his release.

* Witness No. 1, Santonath Bose, mohurrir.
,, 2, Kalipersuno Mookerjea, naib nazir.
3, Chundernath Roy, moonshee.
4, Reazuddy, nazir.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*

J. H. PATTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

OMOO CHUNG.

Sylhet.

1854.

December 22.

Case of OOMOO CHUNG.

The prisoner was convicted as an accomplice in culpable homicide, in attempting to procure an abortion for a woman with whom he had cohabited. Sentence of seven years' imprisonment upheld in appeal.

CRIME CHARGED.—1st count, wilful murder of Musst. Oroon; 2nd count, culpable homicide of Musst. Oroon, by administering and causing to be administered drugs to produce abortion; 3rd count, being accomplice in the crimes contained in the 1st and 2nd counts.

CRIME ESTABLISHED.—Accomplice in the culpable homicide.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 12th September, 1854.

Remarks by the sessions judge.—The prisoner made a voluntary confession before the magistrate that the deceased was with child by him, that he took her to one Fakeerun Domnee for the purpose of procuring abortion, but that she objected that it was late at night, and that she could not find the necessary drugs. That Oroon herself procured a root which the Fukeerun inserted into her vagina and that he, the prisoner, took her home again but that she died three days afterwards. Before the darogah he said that the deceased had pointed out the root to him and that he dug it up for her.

The deposition of the civil surgeon proves that the deceased died from the effects of drugs administered to her, and that in her vagina was a root about ten inches long, which had pierced the further part of the womb and had caused much inflammation.

The prisoner in his defence merely urges that he did not himself administer the drug but the Domnee, and that she has escaped punishment.

This crime is very common and I am sorry to say in this district.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The discovery of the piece of *lal chittah* in the deceased's vagina, and the state of internal inflammation and other symptoms, described by the medical officer in his evidence, leave no doubt of the cause of death, and in every

respect corroborate the prisoner's statement as to the treatment the woman had undergone to procure abortion.

1854.

December 22.

Case of Oomoo Chung.

The confession fully discloses the guilty participation of the prisoner appealing, and we see no reason to interfere with the sentence passed upon him.

PRESENT:

H. T. RAIKES, Esq, *Judge*.

J. H. PATTON, Esq., *Officiating Judge*.

RAMTOHUL CHOKRA and GOVERNMENT *versus* NUNDA SONAR.

Sarun.

1854.

December 22.

Case of Nunda Sonar.

The prisoner was convicted of mutilating his son by tying up his hands in tow and setting it on fire by which the child lost the use of both his hands, and sentenced to ten years' imprisonment.

Crime Charged.—1st, mutilating his son Ramtohul by burning his hands; 2nd, assaulting his son Ramtohul.

Committing Officer.—Mr. R. E. Richardson, magistrate of zillah Sarun.

Tried before Mr. H. Atherton, officiating sessions judge, on the 14th October, 1854.

Remarks by the officiating sessions judge.—This is a case exhibiting great brutality on the part of a father towards his son. The plaintiff a lad about ten years of age is son of the defendant Nunda and was found, on the night of the 21st September last, lying crying in the street by one of the town burkundazes, witness No. 10. His body bore marks of beating and his hands, of which he has lost the use, of burning, and on being questioned he stated that his father had beaten him the day before and that six months previously he had when drunk, tied him up, bound his hands with tow, and then set fire to it, and that during the six months he had been confined in the house and that he had the previous night left his home, and this is the account given in my court of the truth of which there can be no doubt from the evidence adduced, though no one actually saw the defendant set fire to the tow. Witness No. 1, Pudarut, saw the beating inflicted on the lad on the 21st September last, but previously on the *hooly* day, 1st Chyte last, witness No. 6, saw the defendant seize the child, drag him inside and shutting the door, and afterwards heard the child cry and that his father was burning his hands. Witness No. 8, states that he went to defendant's house in Chyte, for some money and then saw the child

Witness No. 10, Lokenath Tewary.

Witness No. 1, Pudarut.
" " 6, Thakoor Gooria.

Witness No. 8, Oochunt.

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December 22.

Case of NUNDA SONAR.

with his hands in a crippled state and was told by the defendant that he was in trouble, as he had tied up his son and burnt him.

Witness No. 1, Pudarut.
" " 7 and 8, Nuckched, Oochunt.
" " 13, Bissa.
" " 5, Dr. A. Fleming, M. D.

The evidence of Pudarut No. 1, is confirmed by that of witness No. 7, and that of No. 8, by witness No. 13, while the neighbours appear all to have heard that the lad had been treated in the manner explained by him, and the evidence of the civil surgeon shows that he has lost the use of both hands from the injury inflicted, marks of beating having been also apparent on the body. The defendant's story is that on the *hooly* day, 1st Chyte last, he brought home some liquor and that after drinking some himself and giving some to his son, he put the rest in a bottle for any friends who might drop in, that the lad got hold of the bottle, helped himself to its contents and when drunk fell with his hands into a pot of lighted charcoal. The defendant says some of his neighbours came in just as this had happened, but none have a word to say in his favor, and the story is obviously false, because his account is that two of them with whom he was at enmity threatened him saying, that they would take the opportunity afforded by the accident of paying him off. Now had this been the case he would undoubtedly have gone to the thannah, and taken his son with him and reported the accident. That the child was not seen about for a long time appears from the evidence of the witnesses, and such confinement can only be explained by the desire of the father to conceal what he had done. The child having been most cruelly treated and lost the use of both hands as though they had been cut off, I recommend, in concurrence with the opinion of the jury, who find him guilty as charged, that a sentence of fourteen years' imprisonment with labor in irons be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Concurring with the sessions judge, we uphold the conviction in this case, and sentence the prisoner to imprisonment for ten years with hard labor.

PRESENT:

H. T. RAIKES, ESQ., *Judge.*
J. H. PATTON, ESQ., *Officiating Judge.*

ALLUM GOWALLA AND GOVERNMENT

versus

BIRHAN GOWALLA (No. 1,) AND JIBLALL GOWALLA (No. 2.)

Bhaugulpore

1854.

December 22.

Case of BIRHAN GOWALLA and another.

Two prisoners convicted of the wilful murder of a herdsman whose buffaloes they had stolen, sentenced to transportation for life.

CRIME CHARGED.—1st count, wilful murder of Roopchand deceased; 2nd count, theft of two buffaloes, valued at Rs. (19) nineteen.

Committing Officer.—Mr. W. T. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 6th November, 1854.

Remarks by the sessions judge. -Prisoners pleaded *not guilty*

Deceased was the herd of Syud Mahomed zemindar, two of whose buffaloes were stolen by the two prisoners. Witnesses, Nos. 1 and 2, saw these men, with whom they were previously acquainted, driving away the buffaloes very early in the morning, one close to the Bhutan, from which they were stolen, the other about two coss distant, they told Roopchand, who gave notice to his master, who told him to go in search of them, this was about the last day of Bhadoo, Tuesday or Wednesday, the 5th or 6th September, exact date not known. Deceased went in pursuit, and in the village of Kurkwara found the prisoners with one of the stolen buffaloes. Roopchand seems to have secured the animal and to have brought it towards his home to near the village of Nuthodee, where both the prisoners reside. At night 9 or 10 P. M. of a Saturday, probably the 9th September, he was heard crying out to Deepoo, witness No. 13, to come to his help, as Birhan and Jiblall (prisoners) were maltreating him. Deepoo with witnesses Nos. 11, 12 and 14, ran to see what was the matter and found deceased lying dead with his bowels ripped open, the prisoners attempted to run away, but were recognized by the witnesses and called by name, when they returned to the spot and begged witnesses not to mention what they had seen. They replied that the case was too serious for silence, and went off to inform Teekun chowkeedar of Nuthodee, looking back they saw prisoners take up the body of deceased in his blanket and carry it off towards the nullah Keol; Birhan, prisoner No. 1, had a knife in his hand, the knife was afterwards found on his person* and is produced in court, the other prisoner Jiblall had a *lattee* in his hand. Witnesses Nos. 12,

* Witnesses Nos. 3 and 4.

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13 and 14 deposed to having known Roopchand before and to have recognized the body on the night of the murder as undoubtedly his.

Teekun chowkeedar, witness No. 4, went immediately to the spot, but found nothing, the nullah being a hill torrent had risen in flood; the next morning he went again and found on the bank the blanket produced in court and sworn to by witnesses Nos. 9 and 10, as the property of deceased. He continued the search and after six days found the body at the village of Mahadeonuggur with its bowels ripped up, it was much decomposed, too much so to move, but was identified by Hoolas, the chowkeedar of another neighbouring village, who had also been informed of the murder by witnesses Nos. 15 and 16, who, on the night in question, had seen prisoners with a dead body in a blanket going towards the *nuddee*.

On the 18th September, notice was given at the thannah of Mulleepoora, fourteen miles from the spot, by Boodoo chowkeedar of mouzah Puchani (made prosecutor) on the 19th, the thannadar went to the spot and held an inquest, but there was then nothing left but bones and of course no recognition could take place. Birhan was apprehended the same day and stated that Jiblall, prisoner, and his brother, Beechoo, had some twenty days previously stolen three buffaloes from Syed Mahomed and asked him, Birhan, to put them up in his *bhutan;* he refused, when they took them away elsewhere to sell; Roopchand coming to look for his buffaloes caught them, Jiblall and Beechoo, with the stolen property in possession, and on his way home brought them to his, Birhan's, *bhutan*, when Jiblall mentioned what had happened and asked his, Birhan's, advice, he replied that he had nothing to do with the buffaloe. Roopchand then told them to bring it to the village, but they resisted He then goes on to state that at night he heard Roopchand cry out that he was being murdered, when he ran up and saw Jiblall and Beechoo coming along, Jiblall had a knife in his hand, he, Birhan, went on towards Roopchand, but not seeing him, returned to his *bhutan*, a day or two afterwards, when the buffaloe in question was grazing about without an owner, he, Birhan, took and sold it to Shibdyal

Jiblall was apprehended on the 21st, he stated that two buffaloes had strayed into his village of Nuthodee and been driven off and swapped away by Birhan and another, but were returned as it being found that they were dishonestly come by. When Roopchand came to look for the buffaloes, Birhan and the other drove them off to Tolachontee, whither Roopchand followed and seized them and brought them to Junoura near which at the *ghat* of the Keol *nuddee*, Birhan and the other began to maltreat Roopchand, some villagers stopped them when Birhan went on and lay in wait for him under a cotton tree, where at

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night he and the other (Nuttonee, Birhan's father-in-law) killed Roopchand with knife and *lattee*, Roopchand cried out to Deepoo, who was a relation of his and he ran up, so did Jiblall who saw Birhan and Nuttonee coming, but saw nothing more of Roopchand.

The statements of the two prisoners before the magistrate agree generally with those taken down in the mofussil.

Before this court their defence is simple denial of the crime or any thing connected with it. their former statements being repudiated, they call no witnesses.

The jury return a verdict of wilful murder against both the prisoners, in which I concur.

The evidence for the prosecution in this court confirms every iota of that taken in the mofussil and before the magistrate. The crime is traced from its origin, the theft of the two buffaloes, up to its consummation in the most complete and clearest manner, the only thing wanting is the exact date, but I am not sure that in native evidence this is not rather an advantage than otherwise, especially where we have, as here, the periods of action made to coincide by collateral and full independent testimony, thus the theft of the buffaloes is said to have occurred on one of the last days of Bhadoo, the 6th of September, corresponds with the 29th or last day of Bhadoo. The intelligence had to be conveyed to Roopchand, who had to inform his master and receive orders, to start in search and come up with the thieves. Allowing for this three days, we have the date of his falling in with the prisoners, the 9th September, the murder is said to have taken place on a Saturday in the early part of Assin; the 9th September, corresponds with Saturday, the 3rd of Assin, six days afterwards, 15th September, Tekun found the body some distance down the *nullah*, by the 18th he and Boodoo, joint-prosecutors, gave notice at the thannah, twenty-eight miles distant, in a country at all times difficult of transit from this, the regular dates are of course established by the thannah reports. The body of deceased was fully identified at the time of the murder, and afterwards when found on the subsidence of the water of the *nullah*, it was still recognizable by the wound in the belly and was further identified personally by Hoolas chowkeedar.

Witnesses Nos. 12, 13 and 14, all speak with certainty and clearness, to what they saw on the night of the murder, and I have every reason to credit their testimony. The motive, the mode, the spot are plainly indicated, the weapon is produced in court, the dead man's garment was found next morning, where the body is supposed, on sufficient grounds, to have been thrown into the *nullah*. Were there any link wanting in the proof, the statements of the prisoners themselves, each endeavouring to criminate the other, would be amply convincing, but every point

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is fully substantiated in evidence, I convict both Birhan and Jiblall of the wilful murder of Roopchand, and see no reason for withholding recommendation that both should suffer death.

The knife was probably used by Birhan, in whose possession it was subsequently found, but this is not actually proved, nor does it, in my opinion, without further evidence of want of consent in the non-using party, alter the nature of the crime as regards either.

The only strange part of the story, as arrived at in the above narrative, is the delay of Teekun in giving notice at the thannah, his excuse is that the *nullah* had filled and the way consequently became impassable, and that till he could give some tidings of the body and secure a proper complainant, no information of his would have been listened to, and this excuse is perhaps sufficient, considering the wild part of the country, where the occurrence took place, and the very heavy rains of the past season. The non-interference of witnesses, Nos. 11, 12, 13 and 14, to secure the body of Roopchand is also worthy of remark, but is easily accounted for by the dread of the native countrymen to encounter any thing like responsibility in an occurrence of this kind.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The judge has convicted the prisoners of wilful murder, and proposes a capital sentence for both of them.

We concur in the conviction, but do not consider a capital sentence in this case necessary.

The circumstantial evidence fully warrants a presumption that these men were implicated in the murder, but no cause is assigned for the deed, while the appearance of the body, as seen at the time of the murder, leaves us to infer that only one of the prisoners actually inflicted any injury on the deceased. The prisoners mutually accuse each other and though this mode of defence rather supports than weakens the impression of their complicity in the crime, it still leaves us in doubt as to the circumstances which actuated both or either of them to assault and kill the deceased. We cannot rely on the witness's statement that Birhan was seen with a knife in his hand, as that fact was not disclosed till after his apprehension, many days after the occurrence, and when a knife had been found in his possession. We sentence the two prisoners to transportation for life with labor.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

GOVERNMENT AND MUSST. GHUNEE

versus

KHAGOO (No. 2,) GURBHOO (No. 3,) AND KHOOBLALL (No. 4.)

Bhaugulpore.

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Case of KHAGOO and others.

Prisoner convicted of culpable homicide, sentenced to five years' imprisonment.

CRIME CHARGED.—Prisoner No. 2, wilful murder of Kuriman Koonjra, deceased. Prisoner Nos. 3 and 4, 1st count, wilful murder of Kuriman Koonjra, deceased; 2nd count, accessaries before the fact; 3rd count, accomplices.

Committing Officer.—Mr. W. Tucker, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 3rd November, 1854.

Remarks by the sessions judge.—Prisoners plead *not guilty*.

Deceased was a shareholder in a mangoe tope and was himself with his son, Poonah, (witness No. 1,) in the habit of watching at night in the tope. On the night in question, the 7th of July, he and his fellow-watchers were attacked by a party of men armed with clubs and his head was fractured, so as to cause death within a fortnight (Dr. Collins, witness No. 10.)

The matter being reported to the jemadar of Secundree, the nearest police station, he immediately proceeded to the spot and taking the evidence of Ghunee, the prosecutrix, wife of deceased, and of Poonah, his son (witness No. 1,) found that they suspected and accused no one, attributing the attack to thieves from a distance. This was on the 8th; on the 9th, Kuriman, the wounded man, had recovered sufficiently to give his deposition confirming the particulars of the attack, and also stating that he recognized and suspected no one. From the 10th to the 16th, the jemadar was employed in following up the case with a view to detect the criminals. On the 17th, he sent in the wounded man to the thanna of Sheikpoora with the prisoners now at the bar and others, reporting that he had in the first instance examined Moosaheb Singh (witness No. 3,) Koonjul Gope (No. 17,) Dookhun Koiru (No. 2,) Dyal Chokra (No. 5,) all fellow-watchers with the wounded man, but all said they suspected no one, and that it was too dark to recognize any one at the time. Suspecting that more was known about the matter in the village, he at last elicited from Dyal, No. 5, a boy about fifteen, that he had at the time recognized Khagoo, Khooblall and Gurboo. Dookhun, No. 2, also said that he recognized Khagoo, and another witness, Bhoo-

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loo Gowala, said that some three days before as well as on the night of the attack, Khagoo, Meethoo and Munsoon had been to his house asking him to join in beating Kuriman. The jemadar further stated that he had taken the deposition of thirty-five inhabitants of the village, to the effect that the first rumour was that thieves were the assailants, but that afterwards it was known in the village that Khagoo and the others were concerned.

On the 19th, the darogah of Sheikpoora sent the wounded man in to the magistrate, reporting that he refrained from sending the prisoners as he did not think the evidence against them sufficient, no one having been named by the eye-witnesses till five days after the occurrence, throughout which they had persisted in denying any knowledge of the persons concerned. The wounded man died *en route* and his body was sent to the doctor for report.

The magistrate on receipt of the darogah's report (22d July,) suspended him and the jemadar, and deputed the darogahs of Mulleepore and Monghyr to carry on the inquiry. On the 27th July and 5th August, 1854, these officers reported finally on the case. The heirs of the deceased, it seems, had accused Khagoo, Khooblall, Gurbhoo, Meethoo and Munsoon, Shamlall and others of the attack, and named Moosaheb Singh (No. 3,) Dyal (No. 5,) Fukeera (No. 11,) Lalloo (No. 4,) and Dhookhun (No. 2,) as their witnesses, these all deposed to having seen with their own eyes and clearly recognized at the time of the attack Khagoo, prisoner, No. 2, Khooblall, No. 4, and Munsoon, (not apprehended), and to have recognized by their voices Gurbhoo (No. 3,) and Meethoo (No. 5). Khagoo and Khooblall further confessed to having accompanied the party with the avowed intention of beating deceased.

The case came in this form to the magistrate, before whom Gurbhoo also confessed to being of the party who assailed deceased. It further appears in evidence that Kuriman, deceased, had on the previous day some words with Shamlall, son of another sharer in the tope, who was in the habit of appropriating more mangoes than his own, and that Shamlall had threatened him with vengeance. The evidence of Dr. Collins is conclusive as to the injury of deceased's skull being of a deadly and incurable nature. The injuries of the others of the attacked party being of so slight a nature as hardly to have been mentioned, shows that the attack was intended for Kuriman personally.

The prisoners, Khagoo, Gurbhoo and Khooblall, all reiterate their confessions before this court as made before the magistrate, with this reservation however that no mention is made of the preconceived intention of beating Kuriman. The prisoner, Meethoo, persists in his denial of being in any way concerned.

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The witnesses for the defence prove nothing in favor of the prisoners.

The jury bring in a verdict of guilty of being accomplices in the culpable homicide of Kuriman, deceased, against Khagoo, Gurbhoo and Khooblall and *not guilty* as regards Meethoo. In all of which I concur.

I consider the evidence against the prisoners as in itself too loose with regard to probabilities, and too dilatory in its avowal to obtain much credit, but the confessions of three of the four prisoners confirm most of the principal facts sworn to, and I have therefore no hesitation in convicting them of complicity in the aggravated culpable homicide of Kuriman, deceased. The aggravation consists in the premeditated attack in the darkness of the night, which premeditation is sufficiently proved by the otherwise vague evidence, confirmed as it is by confession of the prisoners before the magistrate, duly attested on oath by competent witnesses before this court. That the party was made up to attack deceased personally does not, I think, admit of a doubt. I do not believe however that beyond a sound beating any injury was intended, or the finding must have been wilful murder. The evidence for the prosecution, which alone would have been so insufficient, might, under the confirmation above mentioned, be considered available for the conviction of the fourth prisoner, Meethoo, but much of it speaks of him as only recognized by his voice, which, though as credible perhaps in a dark night, as recognition by eye-sight is not, in my opinion, in the absence of all admission on his part, proof enough for punishment. With regard to the degree of guilt and punishment assignable to prisoners, Khagoo, Gurbhoo and Khooblall, I beg to say, I think the accomplices in such a case very nearly on par with the principals, I have indeed named them accomplices, mainly because sufficient proof is wanting of the actual strikers in the assault, and with reference to precedent in a very similar case, page 495, Vol. 3, Part 1, of the Nizamut Adawlut Reports, 18th April, 1853, case of Neemchand Rajwar and others, would recommend that they be imprisoned with labor and irons for ten years. The prisoner, Meethoo, is ordered to be released.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The evidence given by the witnesses in this case is not of a very satisfactory nature. Most of the witnesses denied that they saw or recognized the prisoners, and it was not until a second investigation, and the suspension of the police in the first inquiry that the eye-witnesses swore to the identity of the prisoners. Not much reliance can be placed upon such evidence; the defence however of the prisoners before the magistrate and in the sessions court criminates them. No doubt they give the most favorable statements of this transaction and of their participation in it.

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From the whole of the circumstances on the record, it would appear that the prosecutor and prisoners are sharers in a mangoe-tope; they had disputes about some fruits, which brought on an altercation and resulted in the death of Kuriman, one of the sharers. We do not find that there was that premeditation which would bring the offence of the prisoners within a higher degree of crime than culpable homicide. We sentence them to five years' imprisonment with irons and labor.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

GOVERNMENT ON THE PROSECUTION OF BOOLAKEE

versus

RUNGOO BEARER.

24-Pergunnahs.

1854.

December 23

Case of RUNGOO BEARER.

Prisoner convicted of adultery with the prosecutor's wife, sentenced to six months' imprisonment. Appeal rejected.

CRIME CHARGED.—Adultery with Musst. Patasin, wife of the prosecutor, Boolakee.

CRIME ESTABLISHED.—Adultery.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-Pergunnahs.

Tried before Mr. H. F. James, additional sessions judge of 24-Pergunnahs, on the 14th September, 1854.

Remarks by the additional sessions judge.—When the late assistant to the magistrate and collector of this district was sent on deputation to Gobindpore on the grand trunk road, the prosecutor accompanied him, leaving his wife and family behind. He returned after an absence of about three months and to his astonishment and annoyance, found the prisoner domiciled in his house. He desired him to leave it, but the prisoner refused on the plea that he had given his (prosecutor's) wife some money to keep and would not stir without it. An altercation ensued, which eventuated in the present charge. The prisoner at once admitted that he had carried on an adulterous intercourse with the prosecutor's wife during his absence, but pleaded the woman's entire concurrence in consideration of a present of money. No proof of the defensive plea was offered, but the prisoner's confession asserts it, and that is the only evidence against him. The prisoner is a good looking stripling and the adulteress several years his senior, and I have no doubt that her share in the wrong doing was quite as great as his.

Sentence passed by the lower court.—To be imprisoned without irons for six (6) months and to pay a fine of twenty (20) rupees, within fifteen (15) days, or in default of payment

to labor until the fine be paid or the term of his sentence expire.

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Case of RUNGOO BEARER.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The prisoner in his appeal only urges that the woman had consented and received money from him. There is no cause for interference, the appeal is therefore rejected.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT

versus

NUFFER KOWRA.

Hooghly.

1854.

December 23.

Case of NUFFER KOWRA.

Prisoner convicted of having belonged to a gang of dacoits sentenced to transportation for life.

CRIME CHARGED.—1st count, having committed a dacoity with wounding in the house of Bhoirub Chunder Chuttopadhey at Nowparah, on the night of the 9th July, 1850; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 12th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Nuffer Kowra, is charged with one Dina Das alias Dina Chuprassee (whose trial has been postponed for want of further evidence) with having committed a dacoity in the house of Bhoirub Chunder Chuttopadhey, on the night of the 9th July, 1850, and with having belonged to a gang of dacoits, and pleads guilty to both counts of the charge.

The evidence against the prisoner, irrespective of his admission and the documents indicated in the calendar, consists of the testimony of two approvers* on the establishment of the commissioner for the suppression of dacoity, who prove that the prisoner took part in the dacoity charged, and stood sentry on the outside of the premises while his associates were engaged in plundering. They give a very detailed account of the affair, and shew how the gang first met at the Baghbazar Ghat in the town of Calcutta, how they embarked in two boats and proceeded up the river, how they were re-inforced at Chandernagore, and how they attacked and plundered the house. One of the approvers, Behari Singh alias Kurma Mussulman, states that in addition to the dacoity

* Behari Singh, witness, No. 1.
Teluk Bagdi, witness, No. 2.

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in question, the prisoner took part with him in two other affairs, one at Naogaon about two years previously and the other at Sultea Gowalparah about the same time. The prisoner appears to have been apprehended on the former occasion with some jewels and a pistol; tried, convicted and sentenced to sixteen years' imprisonment.

The fact of the dacoity charged against the prisoner is fully established, as are the confessions and admissions made by him before the dacoity-commissioner, which generally tally with the statements of the approvers* in their detailed confessions before that officer.

* Bhoirub Chunder Chuttopadhey, witness, No. 3.
Girish Chunder Ghutuk, witness No. 4.
Kashinath Mitri, witness No. 5.
Gopal Misr, witness No. 6.

The prisoner makes no defence before this court, admitting his guilt and the truth of the confessions recorded against him.

I convict the prisoner, Nuffer Kowra, of both counts of the charge on the evidence of the approvers and his plea of guilty, and recommend that he be sentenced to transportation for life. The second count of the charge is not framed in strict accordance with the principles laid down in some of the court's late decisions, being too vague and general and not sufficiently explicit, but as the prisoner pleads guilty to the indictment generally, I have allowed it to remain in the calendar.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) Independent of the approvers' evidence, the prisoner Nuffer Kowra has admitted his guilt throughout. In concurrence with the sessions judge, we convict the prisoner of the offences charged, and sentence him to transportation for life.

PRESENT:
SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND SHAIK TOOFANEE

versus

SHEIKH NUBOO (No. 5,) AND SHEIKH NEERAZ (No. 6.)

Mymensingh.

1854.

December 23.

Case of SHEIKH NUBOO and another.

The prisoners were convicted of culpable homicide and sentenced by the sessions judge to five years' imprisonment.

Appeal rejected.

CRIME CHARGED.—Wilful murder of Sheikh Dannoo.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 16th November, 1854.

Remarks by the sessions judge.—It appears from the evidence recorded on the trial, that the deceased was a man of loose character, and he, on one occasion, made advances to the wife of prisoner, No. 5, (who is also sister to No. 6,) and entreated her to gratify his desires. She refused to listen to his proposal and communicated the fact to her husband. She was again met by the deceased, who repeated his request and she asked him to come over at midnight and informed her husband of her having done so. They (the prisoners) caught him as he entered the house, tied him up, and severely assaulted him with a ruler and a wooden peg. As they were thus ill-treating him, witness, No. 1, Rohomut's attention was directed towards the prisoner's house by the noise. He immediately went there and witnessed the ill-treatment and as he gave the alarm, witnesses, Nos.* 2, 3 and 4, came up and let the deceased loose, who then with the assistance of a *lattee*, went towards his own house and died there two days after. When the deceased was visited next day by the witnesses, he related to them that he was enticed to the prisoner's house by his wife to pay her an improper visit. The civil assistant surgeon could not discover the cause of death on account of the advanced state of decomposition in which the body reached the station; he however deposed that the scalp of the head and chest were bruised, and there was a small penetrating wound on the right arm and a bruise on the left elbow, an abrasion of the skin on the right fore-arm and the right foot between the great toe and the next, also a bruise on the left arm near the elbow, with an abrasion of the skin, one and quarter inch long, and two slight lacerations of the skin on the inside of the left leg; that these injuries must have been produced by blows of some instrument such as the ruler and the wooden peg before the court; that none of the bruises were of themselves

* Malleeah.
Harrow.
Checka.

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Case of SHEIKH NUBOO and ...

sufficient to account for death, and that concussion of the brain may have ensued from the same blows, which produced the bruises on the scalp and which might have caused death.

The prisoner throughout admitted having assaulted the deceased with a ruler and a wooden peg, as he forcibly entered the house and attempted to violate prisoner No. 5's wife and No. 6's sister, Baranee, who was a virtuous woman, and never gave occasion to the deceased to make improper advances to her.

The law officer returned a verdict of culpable homicide against both the prisoners, in which I concurred. Although the civil surgeon could not discover the cause of death, still I think from the rest of the evidence adduced on the trial, that death was caused by the beating to which the deceased was subjected, but in the absence of all proof to shew that murder was contemplated and taking into consideration the great amount of provocation, which the prisoners received from the deceased, having repeatedly attempted to violate the wife of prisoner, No. 5, and sister to No. 6, I consider that the punishment awarded will be sufficient for the ends of justice.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of five (5) years each.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The prisoners in their appeal, repeat their assertion that they detected the deceased in the act of forcing the woman, and beat him, but without any intention of taking his life. There appears however no reason to believe that the deceased did more than visit the house, in the hope of finding the woman a consenting party, and was then assaulted by the prisoners and so severely beaten that he died a day or two afterwards.

Seeing no reason to interfere *in favor* of the prisoners, we reject their appeal.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND BISHESHAR

versus

JUDDOO BUNSEE RAI (No. 2,) AND RUNGLALL RAI (No. 3, APPELLANT.)

Sarun.

1854.

December 23.

Case of RUNGLALL RAI and another.

One prisoner convicted of perjury, in having given evidence under a false name, and another prisoner convicted of subornation of perjury sentenced each to three years' imprisonment.

Appeal rejected.

CRIME CHARGED.—No. 2, Perjury, in having on the 28th August, 1854, corresponding with 20th Bhadro, 1261, F. S., deposed under a solemn declaration taken instead of an oath before the magistrate of Sarun that his name is Dilloo Rai, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; No. 3, subornation of perjury in having on the 28th August, 1854, corresponding with 20th Bhadro, 1261, F. S., fraudulently brought forward the defendant, No. 2, under the name of Dilloo Rai to give evidence, which evidence was false.

CRIME ESTABLISHED.—Nos. 2 and 3. The same as crime charged.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 24th October, 1854.

Remarks by the officiating sessions judge.—The case is as follows, defendant, No. 3 Runglall Rai, had a quarrel with Bisheshar, the plaintiff, in this case, about some lands.

The case on the petition of Runglall was brought under Act IV. of 1840, by the magistrate, and a list of witnesses given in by Runglall among whom was one named Dilloo Rai. The witnesses were produced by Runglall himself, defendant, No. 2 personating Dilloo Rai, his brother, when being examined, Bisheshar objected that he was not Dilloo Rai, but Juddoo Bunsee. The contrary however was maintained by the witness as well as by Runglall Rai, who had brought him forward and who put his name to his deposition taken under Act V. of 1840. Inquiry was made by the darogah in the mofussil as to the real name of the witness and it then appeared that his name was not Dilloo Rai, but Juddoo Bunsee and accordingly he was committed for perjury and defendant, No. 3, for subornation of perjury. The witnesses for the prosecution prove the name of defendant, No. 2, to be Juddoo Bunsee, and all doubt is removed by reference to the calendar of July, 1844, in which this defendant, who admitted having been committed to the court of circuit when questioned by the darogah, appears as Juddoo Bunsee in the case of Laloo Koormee versus Runglall Rai, &c.

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December 23.

Case of RUNGLALL RAI and another.

The defence is that defendant, No. 2, is known by the name of Dilloo Rai, and also Juddoonundun not Juddoo Bunsee, but the evidence of the witnesses who support this defence is worthless, for though professing to have known defendant, No. 2, for years and living in the same village, they all say that they can only recollect the name of one of his two brothers, named Pursun. There are three brothers, Juddoo Bunsee, defendant No. 2, Dilloo Rai and Pursun Rai; and Dilloo Rai not appearing, defendant No. 2 was brought forward by defendant No. 3 to personate him and give under that name evidence in favor of Runglall with the view of supporting his claim to the lands in dispute. It is established that this deposition of defendant No. 2 was taken under Act V. of 1840, and that Runglall brought him forward as Dilloo Rai and was present when the perjury was committed and both are clearly guilty as charged, and I therefore, in concurrence with the opinion of the jury, sentence each to three years' imprisonment with labor from this date.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The judge's statement gives a detail of the grounds on which he has convicted the two prisoners. The prisoner No. 2 deposed as Dilloo Rai, in the Act IV. case. Prisoner No. 3 brought him forward as one of his witnesses under that name and it was not till challenged by the prosecutor, Bisheshar, in the foujdary court, that the defence now set up by both the prisoners that No. 2 was called Dilloo *alias* Juddoonundun was thought of. Local inquiry and evidence before the courts prove the *real* name of prisoner, No. 2, and that he deposed under *another* is a matter material to the issue of the case pending before the magistrate. We confirm the sessions judge's sentence in appeal.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

GOVERNMENT AND MUSST. BHEKEA

versus

BABOOJEE (No. 1,) AND BEEKUN JHA (No. 2.)

Tirhoot.

1854.

December 26.

Case of BABOOJEE and another.

Two prisoners convicted as accomplices in the culpable homicide of a man whom they took for a thief, sentenced by the sessions judge to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—Wilful murder of Jankee Mullah, husband of aforesaid Musst.

CRIME ESTABLISHED.—Being accomplices in the culpable homicide of Jankee Mullah.

Committing Officer.—Mr. A. E. Russell, magistrate of Tirhoot.

Tried before Hon'ble R. Forbes, sessions judge of Tirhoot, on the 1st September, 1854.

Remarks by the sessions judge.—It appears that the two prisoners and one Singhessur Jha (not yet apprehended,) were on the night of the occurrence engaged in watching their mangoe garden, when the deceased having been to fish in a *pool* near both the Luckundhee river and mangoe tope, was returning with the fish he had caught through the latter, when the prisoners observed him and supposing that he had come either to pick up fallen mangoes or to steal from the trees, gave the alarm and falling upon him beat him with *lattees* and killed him on the spot, after which they threw the body into the above river, in which it was found and taken out the next day, about the distance of a coss off. Decomposition had, however, too far advanced when it reached the station to admit of medical examination.

The prosecutrix is alleged to have stated at the thannah that she had no witnesses, and the mother of the deceased that her son had died a natural death, and that she had no claim against the prisoners. Both, however, made statements of quite an opposite nature before the magistrate, and as the darogah, who first investigated the case, and who did all he could to suppress its real facts by giving a false return, having been first suspended was eventually dismissed, the inquiry of another darogah having elicited the truth, the above statements attributed by the thannah papers to the prosecutrix and the mother of the deceased cannot be relied on.

The evidence of four persons adduced as eye-witnesses brings home the charge to the prisoners. These witnesses deposed that being employed on the night in question in watching their fields, about a *beegah's* distance from the mangoe tope, they heard the prisoners give the alarm of "thieves," and afterwards saw them pursuing the deceased, who came running in the direction of

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their (witnesses') field, and that the prisoners having beaten the deceased with *lattees* killed him and threw the body into the river.

The witnesses to the *sooruthal* depose to seeing on the body the mark of a blow on the right temple and one on the head.

Both the prisoners all along pleaded *not guilty*, and both set up an *alibi* in their defence, but as that was not at all established, I concurred in the propriety of the *mooftee's futwa (tazeer)* which convicts both of being accomplices in the culpable homicide of the deceased, and they have been sentenced, as shewn in the column of the statement, there being nothing on the record to shew the existence of any previous ill-will on the part of the prisoners towards the deceased.

Sentence passed by the lower court.—Each to be imprisoned for five (5) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The petitioners in appeal plead that the discrepancies in the evidence against them invalidate the testimony of the witnesses. We find no material difference in the allegation of the witnesses, as regards the actual guilt of the prisoners, who were seen to pursue and knock down the deceased by repeated blows and to kill him on the spot, when his corpse was thrown into the river.

These facts were elicited on a second inquiry, as the first police officer deputed made attempts to conceal what had occurred. The prisoners plead *alibi*, but their witnesses depose they know nothing of the plea they are brought forward to support.

The case we consider to be one of great aggravation; the prisoners evinced most wanton disregard of life in a case, where, so far as the record shews, no provocation was given, and the prisoners should have been convicted of the major crime with which they were charged. The case is in appeal before the Court, and they cannot legally interfere further.

PRESENT:

SIR R. BARLOW, BART., *Judge*.
J. H. PATTON, ESQ., *Officiating Judge*

TRIAL NO. 1.

GOVERNMENT AND SHIB CHUNDER SIRCAR

versus

KANYE DOSS (NO. 1,) KEBUL DUTT (NO. 2.)

TRIAL NO. 2.

GOVERNMENT AND MUSST. MOOKTESHURRY

versus

KANYE DOSS (NO. 1,) AND GOBIND CHUNDER DOSS (NO. 3,) AND KALLA CHAND KOOND (NO. 4, NON-APPELLANT.)

TRIAL NO. 3.

GOVERNMENT AND RADHA CHURN BUNDOPADDYA

versus

KANYE DOSS (NO. 1,) KEBUL DUTT (NO. 2,) KALLA CHAND KOOND (NO. 4, NON-APPELLANT,) GOOROO PERSAD CHUCKERBUTTY (NO. 5, NON-APPELLANT,) RAMLOCHUN BAGUL (NO. 6,) AND FUTTICK CHUNDER DOSS (NO. 7.)

Backergunge.

1854.

December 27.

Case of KANYE DOSS and others.

The prisoners were charged in three several cases with burglariously entering boats and stealing property and with having the stolen property in their possession. In appeal the crime of having the stolen property in their possession, was found to be proved.

CRIME CHARGED.—*Trial No.* 1.—1st count, burglariously entering the prosecutor's boat and carrying away property to the amount of Co.'s Rs. 42-11; 2nd count, knowingly and wilfully receiving and keeping the stolen property.

Trial No. 2. 1st count, burglariously entering the prosecutor's boat and carrying away property to the value of Co.'s Rs. 89-8-9; 2nd count, knowingly and wilfully receiving and keeping the stolen property.

Trial No. 3.—1st count, burglariously entering the prosecutor's boat and carrying away property to the value of Co.'s Rs. 14-5-3; 2nd count, knowingly and wilfully receiving and keeping the stolen property.

CRIME ESTABLISHED.—*Trial No.* 1.—Knowingly and wilfully receiving and keeping the stolen property

Trial No. 2.—No. 1, burglariously entering the prosecutrix's boat and carrying away property therefrom and No. 3, knowingly and wilfully receiving and keeping the stolen property.

Trial No. 3.—No. 1, burglariously entering the prosecutor's boat and carrying away property therefrom and Nos. 2, 6, and 7, knowingly and wilfully receiving and keeping stolen property.

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Case of KANYE DOSS and others.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 4th August, 1854.

Remarks by the sessions judge.—The prosecutor's boat was burglariously entered on the night of the 4th May, 1854, by thieves, and all the little property he had on board was carried off.

For eight days, he says he was ill at home, but on the 13th May, he gave information of the circumstance to the Nulchitty darogah, and at the same time told him that he suspected Kanye Doss and others to be the thieves, as they were released convicts and notorious bad characters.

The darogah proceeded to search the houses of these parties, and properties of all sorts and of a most miscellaneous description was found in the house of the chief prisoner Kanye No. 1. Less considerable property, but of a suspicious nature, was also found in the houses of the other prisoners.* Among the property found in the house of prisoner No. 1, Kanye, were two blank stamp papers. The endorsement of the stamp vendor indicating the party to whom the papers belonged the darogah sent for him. But prior to his arrival the prisoner No. 1, Kanye Doss finding that the discovery of new property lodged in case of search in the houses of his relatives and neighbours was accumulating a load of proof against him, volunteered a confession to the effect that all the property found was the plunder of boats robbed in company with one Gour Chand Koond, and that he could neither tell the number of these adventures or who the parties were who had suffered by them. Upon this the darogah who had detained the prisoner, in order that he might be present when the owner of the stamp paper made his appearance to identify his property, thinking it unnecessary to keep him longer on the spot forthwith despatched him to the magistrate. He then protested that he was an innocent man and he denied his mofussil confession.

On the 29th May, 1854, the party whom the darogah had been in search of made his appearance, he also stated that on the 21st Bysack, 1261, his boat was robbed and property to the amount of Rs. 14-15-3, among which was the stamp paper, was carried off. He also gave the darogah a clue as to the owner of some silver ornaments found in possession of the prisoner No. 1, Kanye Doss. This person being sent for, likewise stated that her boat had been robbed and that the silver ornaments alluded to and sundry pieces of cloth were her property.

Thus there are three separate cases, prisoner No. 1, Kanye

* No. 2, Kebul Dutt, No. 3, Gobind Chunder Doss, No. 6, Ramlochun Bagul, and No. 7, Futtick Chunder Doss, respectively concerned in this and in cases Nos. 2 and 3.

Doss is concerned in all three, prisoner No. 2, Kebul and No. 4, Kalla Chand are concerned in two of them and the rest* in one of them. The parties having been made over to the sessions I proceed to give the result of the evidence elicited against each at their respective trials.

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Case of KANYE DOSS and others.

* No. 3, Gobind Doss.
" 5. Gooroo Persad.
" 6, Ramlochun.
" 7, Futtick.

Trial No. 1.—The parties committed in this case are Kanye and Kebul.

Witnesses No. 6, Becharam Chung, No. 7, Soorjonarain Chund, No. 8, Hur Chunder Doss prove the occurrence of the theft.

Witnesses No. 1, Ram Kanye Doss, No. 2, Muddun Mohun Doss, No. 3, Ram Coomar Biswas prove the finding of properties numbered 7 and 275 in the houses of prisoners† Nos. 1 and 2, respectively.

† Kanye and Kebul.

Witnesses No. 1, Ram Kanye Doss, No. 2, Muddun Mohun Doss, No. 4, Tara Chand Doss, No. 5, Poornoo Chunder Doss, identify the properties numbered 7 and 275, as belonging to the prosecutor.

The defence of prisoner No. 1, Kanye Doss, was that the property No. 7, a brass *lotah*, was his own.

The defence of prisoner No. 2, Kebul Dutt, was that the property No. 275, a silk *dootee* was not his, but that a silk *dootee* had been found in the search of his house which had been exchanged for the one produced on the trial.

The witnesses named by these prisoners say nothing in their exculpation.

The property identified out of the heap of articles of various description found in possession of the prisoners is but very trifling. But it is such as is capable of easy recognition. An old *lotah* in constant use may very readily be distinguished by its owner out of any number of the same description of articles. The silk *dootee* found with the prisoner No. 2, Kebul Dutt, is not claimed by him, his plea is that it is not identical with the one which was produced from his house but is another given in exchange.

The jury found the prisoner No. 1, Kanye Doss, guilty on strong presumption of burglary and theft, and prisoner No. 2, Kebul Dutt, of knowingly keeping the stolen property.

As the confession made by prisoner No. 1, Kanye Doss, was read in evidence against him on this trial, the evidence against him and the other prisoner only establishes in my opinion a receipt and keeping of stolen goods, knowing them to be stolen. I hold therefore that both the prisoners are convicted of the second count of the charge.

Trial No. 2.—The parties committed in this case are Kanye No. 1, Gobind No. 3, and Kalla Chand‡ No. 4.

‡ Vide statement No. 8.

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The witnesses No 1, Ram Coomar Biswas, No 2, Ram Kanye Doss, No. 3, Muddun Mohun Doss prove the mofussil confession of prisoner No 1, Kanye, which is to the effect that he and one Gora Chand thieve in company, that he cannot state the number of different thefts committed on persons travelling by boat, that the property found in his house was almost the whole of it the reward of these adventures and that Gobind (prisoner No 3,) was always the receiver of the spoils

Witnesses Nos 1, 2 and 3 above named, prove that properties Nos 263, 261, 265, 267 and 269, and properties Nos 280 and 290, were found either in the prisoner No 1's house or near his house in a concealed place pointed out by his wife

The same witnesses prove that the search of Gobind's* house resulted in the finding of properties Nos 166 and 232

* Prisoner, No 3

Witnesses No 4 Tara Chand Doss and No 5, Teeluck Chunder Doss prove the finding of property No 357 in the house of prisoner No 4 Kalla Chand Koond

Witnesses No 6 Ammnoolla No 7, Bungshi Kyeburt, No 8 Hur Chunder Kurmokur identify the property Nos 6 and 7 were with the prosecutrix when the theft happened and No 8 made property No 269, which is a silver locket and chain for the prosecutrix

Prisoner No 1, Kanye claimed the property found in his house and given up by his wife as his own

Prisoner No 4 Kalla Chand Koond† claimed the brass cup found in his house

† Vide statement No 8

Prisoner No 3 Gobind stated that the properties Nos 166 and 232, were not his and that they were not found in his house

Witnesses No 11, Muddun Mohun Sein, No 12 Nubo Sircar the former a Hajut prisoner, the latter a convicted convict, were called to give evidence for prisoner No 1, Kanye Doss, but they established nothing in his favor

No 13, Kalla Chand Doss and No 14 Gour Chunder Doss, witnesses of prisoner No 3, Gobind, are ignorant of any thing in favor of the prisoner

No 17, Becharam Dhoopee No 18, Gobind Byragee No 19, Gour Mohun Chund, witnesses of prisoner No 4, Kallachand, prove that the brass cup No 357, found in his house is the prisoner's property

It is necessary to remark that the most valuable part of the property recovered in this case was discovered in this way, a written inventory of property was found in the house of the prisoner No 3, Gobind, and on the darogah's pressing him and his mother to divulge what had become of it, they stated that after its deposit with them, it had been removed to the house of

prisoner No. 1, Kanye. It was delivered up from a concealed place as above stated by the wife of prisoner No. 1. 1854.

The jury find the prisoner No. 1, Kanye Doss, guilty of the burglary and theft charged in the first count, and prisoner No. 3, Gobind, and No. 4, Kalla Chand guilty of the charge preferred in the second count, in which I agree as to the finding against the prisoner No. 1, Kanye Doss and No. 3, Gobind; but I disagree as respects the prisoner No. 4, Kalla Chand, for reasons which I reserve for record in my remarks on the next trial. December 27. Case of KANYE DOSS and others.

For prisoners Nos. 4 and 5, see statement No. 8.—Trial No. 3.—The parties committed in this case are No 1, Kanye Doss, No. 2, Kebul Dutt, No. 4, Kalla Chand Koond, No. 5, Gooroo Persad Chuckerbutty, No. 6, Ramlochun Bagul, No. 7, Futtick Chunder Doss.

Witnesses Nos. 1, 2 *and* 3, *Muddun Mohun Sein, Ramcoomar Biswas and Ram Kanye Doss* prove the mofussil confession of prisoner No. 1, Kanye, and the finding of different articles of property from the houses of the prisoners, No. 1, Kanye Doss, No. 2, Kebul Dutt, No. 6, Ramlochun Bagul and No. 7, Futtick Chunder Doss, or which they produced from other places.

Witnesses Nos. 4 *and* 5, *Tara Chand Doss and Tilluck Chunder Doss* prove the finding of certain properties a brass dish and a brass cup from the houses of the prisoners, Nos. 4 and 5, Kalla Chand and Gooroo Persad.

Witnesses Nos. 6 *and* 7, *Kasheenath Shikdar and Juggo Mohun Shikdar*, prove the property to belong to the prosecutor and that it was carried off in a theft.

Prisoner No. 1, Kanye Doss, affirms that the property (including two blank sheets of stamp papers) was not found in his house, but he claims as his, a *lotah* found in the possession of his brother, prisoner No. 7, Futtick Chunder Doss.

Prisoner No. 2, Kebul Dutt, makes the same defence, viz., that the property was not found in his house. Prisoner No. 4, Kalla Chand Koond,* claims the *thal*, and I may say at once that his witnesses prove it to be his property. Prisoner No. 5, Gooroo Persad Chuckerbutty,† claims the brass cup found in his house and his witnesses prove that it is his property. Prisoner No. 6, Ramlochun, denies that he pointed out the property No. 85, from a jungle; prisoner No. 7, Futtick Chunder Doss, says that the brass *lotah* was lent to him by the prisoner No. 1, Kanye Doss, whose own property it is.

* Vide statement, No. 8.

† Ditto ditto.

Witnesses Nos. 9 *and* 10, *Mohesh Nundi and Nubae Hazra*, are the same as the prisoner No. 1, called on his defence in trial No. 2, they know nothing more than that the prisoner

1854. when he was in jail had a *lotah* like the one found in the house of the prisoner No. 7, Futtick.

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Witnesses Nos. 11 *and* 12, *Komul Mookopadhia and Joy Chunder Bhuttacharj*, called by prisoner No. 2, Kebul Dutt, know nothing in the prisoner's favor.

Witness No. 23, *Gour Dutt*, called by the prisoner No. 6, Ramlochun, is utterly ignorant of any thing alleged in the prisoner's defence.

Witnesses Nos. 24 *and* 25, *Shibayi Doss and Muddun Bagul*, of prisoner No. 7, Futtick, depose that the prisoner got the *lotah* from his brother, prisoner No. 1, Kanye.

The jury find the prisoner No. 1 Kanye Doss, guilty on the first charge and the prisoner No. 2, Kebul, No. 4, Kalla Chand, No. 5, Gooroo Persad, No. 6, Ramlochun, No. 7, Futtick, guilty on the second charge.

Two articles of property were found in No. 4, Kalla Chand's house, a brass cup belonging to the prosecutor in case No. 2, and a brass *thal* in case No. 3.

Now, though I give every credit to the witnesses for the prosecution for meaning to speak the truth, I am not satisfied that their identification of the property is so certain to be correct that it would be safe to convict upon it. The prisoner has given witnesses above the common order, that the articles are his and they are likely to be as correct and more so than the witnesses produced by the presecutor. The same observations apply to the prisoner No. 5, Gooroo Persad. The prisoners No. 4, Kalla Chand, No. 5, Gooroo Persad, I consider entitled to their acquittal, and they have been acquitted. In regard to the other prisoners, I agree in their conviction.

The prisoner No. 1, Kanye Doss, is by his own admission, from his previous conviction and from the discovery of so much suspicious property in his possession, a professional thief, so infested is the river way between Nulchitee and Cutchoa with men of this stamp, that very few persons go through this beat without suffering from the depredations of these boat-robbers.

He admitted to the darogah that the property found was mostly obtained by thefts committed on different persons, and at different times on the river. Three parties have appeared to lay claim to some of that property, and in the case of No. 2, of them I hold that the prisoner's mofussil confession, duly verified and read at the trial, together with the other evidence adduced against him, is sufficient to warrant a finding, that he actually committed the burglary by means of which the property fell into his hands. Whereas in the case of the trial No. 1, where the mofussil confession of the prisoner was not read in evidence, he can only be held guilty of receiving and keeping the goods knowing them to be stolen. For these three convictions, I

award him to a consolidated sentence of seven years' imprisonment with labor in irons.

Kebul Dutt, prisoner No. 2, having been convicted in the two trials Nos. 1 and 3, of the second count, contained in the two calendars I award him a consolidated sentence of five years' imprisonment with labor in irons.

Gobind, No. 3, having been convicted in trial No. 2, of the second count in the calendar, I sentence him also to five years' imprisonment with labor in irons, as from prisoner No. 1, Kanye's confession, and all the facts of the case especially as to the manner in which the articles of silver jewellery were recovered, I consider that there is a sufficient presumption that he is an habitual receiver.

Prisoner No. 6, Ramlochun Bagul, is near relative of prisoner No. 1, Kanye, and No. 7, Futtick, is his brother, and both have been proved on the trial No. 3, to be guilty of the 2nd count of the charge. From their relationship to the prisoner No. 1, Kanye, from their being almost inmates of the same house with him, from the nature of several articles of property found with them, I cannot suppose that they were ignorant how the property in their own and in prisoner No 1, Kanye's, possession was procured. Though but trifling has been found with them, I look upon their guilt as no less than that of the prisoners Kebul Dutt No. 2, and Gobind Chunder No. 3. They have been sentenced therefore to the same extent.

Prisoners No. 4, Kalla Chand Koond, and No. 5, Gooroo Persad Chuckerbutty, calendar No. 3, have been acquitted, as per statement No. 8 of this month.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. H. Patton.) The proof in this case is of the weakest nature.

Case No. 1.– Two pieces of property only, a brass *lotah* and a piece of *tusser dhootee*, were found, as three witnesses say, in the houses of the two prisoners. The prosecutor laid no information at the thannah for ten days after his boat was robbed, he accounts for this in the sessions, saying he was sick and therefore could not go to the police. Before the darogah, he said he went home and was making inquiries when having heard the prisoners were bad characters, he gave notice that he should inform against them. Upon this the prisoners observed what is the use of doing so. Notwithstanding, however, prosecutor did, on the 13th May, (the robbery took place on the 4th *idem*) depose against the prisoners, whose houses were searched on the 14th and 15th May, and various descriptions of property, none however of any great value, amounting by the list to some 389 articles was produced. Of these, eighteen have been recognised by the witnesses in this and two other cases, now before the Court, which have been referred by the sessions judge for final orders: why the prisoners,

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though told by the prosecutor that he was about to inform against them, kept all this property till the arrival of the police, though they had ample opportunity of removing it intermediately, and why there was so much delay before the prosecutor came forward, is not at all satisfactorily explained. The prisoners are entitled in this case to their acquittals. The Court observe that in this and the two cases submitted with it, the sessions judge has not complied with the Circular Order No. 7, of 26th May last, by filling up the column prescribed under headings Nos. 9, 10 and 11, in the comparative statement as required.

Case No. 2.- The prisoner, No. 1, was apprehended and his house searched in the case No. 1, this day disposed of. The property, silver ornaments and brass utensils belonging to the prosecutrix in this case was found in it. She was summoned with the witnesses, who recognised the several ornaments, and the witnesses in the calendar swear to their having been produced from the houses of prisoners, Nos. 1 and 3. The silversmith, who made the waist chain, swore to it and also to other ornaments belonging to the prosecutrix. The prisoner, No 1, is said to have confessed in the mofussil that there was some irregularity in the taking it down, he denies altogether before the court; prisoner, No. 2, denied throughout. The witnesses cited by the prisoners state they can say nothing in their favor, though they appear to be respectable persons in life. We convict the prisoners of receipt of stolen property, knowing it to have been such on strong presumption.

Case No. 3.—The prisoner, No. 1, has already been convicted in case No. 2, in concurrence with the sessions judge. The Court have acquitted him in case No. 1, they convict him in this case, No. 3, considering him guilty of receipt of stolen property, knowing it to be such, on strong presumption, and sentence him to five years' imprisonment with irons and labor.

The prisoner No. 2, prisoner No. 3, in case No. 2, and prisoners Nos. 6 and 7, in this case, No. 3, we also similarly convict of receipt of stolen property knowing it to be such, and sentence them to three years' imprisonment with irons and labor. The prescribed column in headings Nos. 10 and 11, of the comparative statement, in all three cases has not been filled up by the sessions judge as required by C. O. 26th May last, No. 7.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

KASHICHUNDER MOOKOTE AND GOVERNMENT

versus

MOHUN BASHI alias FUTTOOA DHOOBY (No. 1, APPELLANT,) DENGUR DASS (No. 2, APPELLANT,) SHEIKH DOOKHIE (No. 3,) SHEIKH AMEEROODDEE (No. 4,) AND MUSST. JEEREE (No. 5.)

Dacca.

1854.

December 28.

Case of MOHUN BASHI *alias* FUTTOOA DHOOBY and others.

Conviction and sentence in a case of burglary, upheld in appeal.

CRIME CHARGED.—Prisoners, Nos. 1, 2, 3 and 4, burglary and theft of property valued at Co.'s Rs. 2,264-8; 2nd count, receiving the same, knowing such at the time to have been stolen; 3rd count, accomplices aiding and abetting in the same. Prisoner, No. 5, receiving the above stolen property, knowing such at the time to have been obtained by theft and with being accessary after the fact.

CRIME ESTABLISHED.—Prisoners, Nos. 1, 2, 3 and 4, burglary and theft, and having in their possession the stolen property, knowing the same to have been so obtained. Prisoner, No. 5, possessing stolen property, knowing the same to have been so obtained.

Committing Officer.—Mr. T. Tweedie, deputy magistrate of Moonsheegunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 12th September, 1854.

Remarks by the sessions judge.—The house occupied by the prosecutor and his father was entered by burglary, and property to the value of about Rs. 2,264-8, stolen on the night of the 28th June. Suspicion having fallen on Sheikh Dookhie (prisoner No. 3,) a man of bad character, the prisoners were apprehended on his statement, and the property found in their possession.

The circumstances were fully established by witnesses,* and the property recognized.

* Nos. 9, 20 and 25.

The prisoners confessed at the thannah and before the magistrate. In this court, they all pleaded *not guilty.* They called no witnesses.

The law officer convicted the prisoners Nos. 1 to 4, on the two first counts charged, and No. 5, on that against her name. I concurred in the *futwa.*

The prisoner, Jeeree No. 5, being the wife of Dookhie (No. 3,) acted probably altogether under his influence, a lenient sentence was passed on her. The deputy magistrate should have called on the Mohafez for the record of any former convictions of the prisoners; Dookhie admits one for affray, an offence which

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cannot be considered in passing sentence on this conviction. The 3rd count, charged in the calender, was unnecessary under the Circular Orders Nos. 109 and 110, of 15th July, and 22nd August, 1853. A copy of the two last paragraphs of these remarks has been forwarded to the deputy magistrate at Moonsheegunge.

Sentence passed by the lower court.—Prisoners, Nos. 1, 2, 3 and 4, each to be imprisoned for the period of seven (7) years and two (2) years in lieu of stripes, total nine (9) years with labor and irons; prisoner, No. 5, to be imprisoned for the period of six (6) months with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The prisoners, appealing, confessed before the police and the foujdary, and property to a large amount was found in their possession and recognized by the prosecutor and his witnesses

Before the sessions, they did not deny having confessed, or the discovery of the property, but alleged that ill-treatment had induced them to make those confessions at the thannah, and that the property had been conveyed to their premises to implicate them; another story is told in their appeal about a plot having been concocted against them by another accused party, but throughout no witnesses have been cited by the prisoners, and we consider the proof too clear and conclusive against them to interfere with the sentence passed.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges.*

Hooghly.

GOVERNMENT ON THE PROSECUTION OF MUDUN LAHA

versus

GUNESH CHUNDER SYE (No. 2, APPELLANT,) AND DROBOMOYEE SUTGOPINEE (No. 5.)

1854.

December 28.

Case of GUNESH CHUNDER SYE and another.

Conviction and sentence on a charge of dacoity and knowingly receiving the plundered property upheld in appeal.

CRIME CHARGED.—1st count, dacoity and plundering property to the amount of Rs. 915-11-6, on the 1st April, 1854; 2nd count, knowingly receiving portions of plundered property.

CRIME ESTABLISHED.—Dacoity and knowingly receiving portions of plundered property.

Committing Officer.—Baboo Kissory Chand Mitter, deputy magistrate of Jehanabad.

Tried before Mr. G. G. Mackintosh, officiating sessions judge of Hooghly, on the 12th July, 1854.

Remarks by the officiating sessions judge.—The trial was conducted under the provisions of Act XXIV. of 1843.

The prisoners pleaded *not guilty*.

The prosecutor's house in the village of Sreepore, thannah

1854. **December 28.** **Case of GUNESH CHUNDER SYE and another.**

Jehanabad, was attacked by a band of thirty or forty dacoits, about midnight of the 20th Choit, seven or eight of their number forcing open the door entered the house, one of them struck the prosecutor a blow, which seems to have frightened him so much, that he could neither recognize his assailants nor give an alarm; the other inmates of the house escaped, and the dacoits succeeded in carrying away booty consisting of cash, ornaments, domestic utensils, &c., valued at Rs. 915-11-6, none of the dacoits were recognized, as the villagers who heard the noise did not dare to approach near enough to identify them.

On the second day after the dacoity, the prisoner, Gunesh Chunder Sye, No. 2, was met by the chowkeedars, witnesses Nos. 2 and 3, at Khutnuggar, in the Burdwan district, several *coss* from the scene of the dacoity and four *coss* from his own house, carrying some articles in his clothes and their suspicion being roused, they detained him and he produced the articles, Nos. 1 to 7, consisting of ornaments, vessels, and cloths, which he acknowledged that he had obtained in the dacoity, of which he subsequently made a full confession both before the police and the deputy magistrate, in the former of which he implicated the prisoner, No. 5, Drobomoyee Sutgopinee, in whose house were found four silver ornaments and a colored cotton *sarree*. She confessed before the police her privity to the dacoity, and that she had received the articles found in her house from prisoner, No. 2. The latter admission she repeated in her confession before the deputy magistrate, but she qualified her previous statement, by saying that she did not suspect them to have been dishonestly obtained, until she heard of the dacoity.

All the property was proved to belong to the prosecutor. Both prisoners retracted their confessions at the trial, and Drobomoyee produced witnesses to prove that the ornaments were her own property, their testimony however is too general to weigh against the evidence for the prosecution, and one of the witnesses appears to have been implicated in the case.

I convict the prisoner, Gunesh Chunder Sye, of both counts of the charge and the prisoner Drobomoyee, No. 5, of the 2nd count, upon their confession both before the police and the deputy magistrate and upon the evidence.

I sentence the prisoner, No. 2, to seven years' imprisonment with labor in irons, and prisoner, No. 5, to three years' imprisonment with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) The Court see no reason to interfere; the prisoner confessed before police and the foujdary court; property, sworn to by the prosecutor, was found on him at a distance of four *coss* from the scene of the occurrence. He denied in the sessions and pleaded good character. In appeal to the court, he stated the property was brought and forced on him.

PRESENT:

SIR R. BARLOW, BART., AND H. T. RAIKES, ESQ., *Judges*.

GOVERNMENT AND RUNGAI TICKLAH

versus

MUSST. MEMERI (No. 1,) AND LUSHKUR DOME (No. 2.)

Assam.

1854.

December 28.

Case of Musst. Memeri and another.

The female prisoner was convicted of administering a poisonous drug to her mother and father-in-law in consequence of which the latter died, but it being doubtful whether she was acquainted with the exact nature of the drug, she was sentenced to five years' imprisonment. The other prisoner was acquitted.

CRIME CHARGED.—Prisoner, No. 1, murder in having on the 30th August, 1854, administered to the deceased, Bolia Mahout, poison, by mixing it in his food, whereof the said Bolia Mahout died, and the life of Parooah, his concubine, was thereby also endangered. Prisoner, No. 2, accessary before the fact, in having counselled the aforenamed Memeri to administer poison to the aforesaid Bolia Mahout and Parooah, his concubine, of which effects the aforesaid Bolia died.

Committing Officer.—Lieutenant T. Lamb, officiating magistrate of Nowgong.

Tried before Major J. Butler, officiating deputy commissioner of Assam, on the 6th November, 1854.

Remarks by the officiating deputy commissioner.—The prosecutor, Rungai Ticklah, states as follows.

In the present month of Bhadro, about the 16th, it was my time to be in attendance at night in the magistrate's bungalow, about 4 o'clock in the morning, Monu Mahout and Ameer Mahout came and informed me that Bolia Mahout, of the Government elephant, had in his opium taken some poison, or some thing else and was dead. I told them to report the circumstance to the *sahib*, but that as he was then asleep, to come and do so in the morning, after this they went away. In the morning early, the magistrate heard the circumstance from Manaram Sirdar, and he directed me to go and fetch whatever remained of the opium by which the deceased died. I went to Bolia's house and demanded the opium, on which Musst. Memeri, now present, produced a Tami, (or small box) with some opium, which Tami with the opium, I took and gave into the hands of the magistrate, on which he ordered me to bring the darogah. I went and brought him to the magistrate, what orders he gave him and what he said to him I do not know, but afterwards I heard that the deceased Bolia met with his death by eating some vegetable that was poisoned, I know nothing besides this. I did not see the corpse of the deceased.

Defence of Musst. Memeri, No. 1, prisoner.—I mixed some poison in some vegetable food and gave it to the deceased, Bolia, by eating which he died, and Musst. Parooah also eating of the same her life was endangered, but taking medicine she recovered.

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Defence of Lushkur Dome, No. 2, prisoner.—I never gave Musst. Memeri any poison, and I never counselled her to give the same to the deceased, Bolia, and Musst. Paroowh, and was not in any way accessary before the fact of the crime charged against me.

Deposition of Musst. Parooah, first witness for prosecution.—In the present month of Bhadro, the date I do not recollect, but about fourteen days from this date, at 8 o'clock one night, my *dhemna** husband, Bolia Mahout, brought some opium from the bazar. I made use of the opium that was in the house, and in doing so, found something in it like a piece of skin, which I put in my mouth and chewed. In doing so, I felt a pain in my tongue, afterwards I mentioned to Bolia Mahout that I had found something in the opium like a piece of skin, and that by chewing it my tongue was getting cold and getting turned up. After this, Bolia made use of the opium he had brought from bazar, but found nothing in it. Musst. Memeri after this brought us some rice and vegetable to eat, and both of us on eating a little felt our bodies burning and uncomfortable, and our feet and hands tingling, and our tongues being drawn inwards. We then told Ameer Mahout and consulted him, he desired us to eat some acid and garlick. On doing which we felt worse, and Bolia placing me on a mat, he went out to Hurruck doctor to get some medicine. What happened after this I cannot say, but on opening my eyes once at night, I saw that Lushkur Dome and Musst. Memeri had given me some medicine out of a *battee.* I was not in my proper senses that night. On its getting morning, Hurruck doctor came and gave me some medicine, which bringing me to my senses, I saw that Bolia was dead, and the convicts afterwards came and took away his corpse. The thannah darogah came to inquire about the case and Musst. Memeri confessed that Lushkur Dome, now present, mixed something on a stone, saying it was medicine, and that she mixed it in the vegetable. On eating which, I became senseless, and Bolia died, and that after we had eaten of the vegetable, the deceased, Bolia, said that some poison was put in it. Memeri then said that no poison was put in it, saying which, she took the cup in which the vegetable was and threw it in the water. This I know.

* Not married, temporary husband.

When I saw the corpse of Bolia, I was not properly in my senses, and I did not see it well.

Question.—In your former deposition you stated that the deceased Bolia got out of his bed and rolled over and fell to the ground and died, wherefore do you now state differently?

Answer.—Yes, Bolia died as I had said, but I forgot to mention it, at that time I was not in my right senses, I could hear sounds, but I could not open my eyes.

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Bolia Mahout had purchased and kept some poison in the house, which the darogah has brought away. He purchased that poison from Lushkur Dome, now present, but in what month or date, I do not recollect.

Lushkur Dome used always to come to our house to coax my daughter, Musst. Memeri, and take away various things, on this account I and Bolia used to forbid him, and he bore enmity against us.

Question.—What did Memeri say was the cause for Lushkur Dome giving the medicine, and what did he say, and what was the medicine?

Answer.—That I and Bolia would become on good terms with him and Memeri again. On eating of the vegetable, I did not find it astringent or bitter, but my tongue got quite cold.

Question.—If you see the poison that was in your house and the opium in which the poison was, could you recognize it?

Answer.—If I saw it, I could recognize it.

The deponent, Musst. Parooah, further states on seeing the lump of poison and the opium in the box, and the three little pieces of poison in the opium, that this lump of poison was in my house, and this is certainly the opium that was in my house, and the thin pieces like poison which were in the opium, one, on tasting, affected my tongue, and I have above fully noticed this.

Madoo Meter, No. 2, witness for prosecution.—In the present month of Bhadro, I do not recollect the date, about 8 o'clock one night, my father by adoption, Bolia Mahout, called me from Baloo Kyah's house and told me, that he and my mother, Musst. Parooah, after eating some opium and taking their food, their bodies were tingling and they were feeling very uncomfortable, that somebody had mixed poison with their food, and he forbid me to eat that food, and I did not eat it. My mother was lying senseless on her bedding. Bolia went to Hurruck doctor's house and brought some medicine, which he personally administered to my mother, Musst. Parooah, on which my mother getting better, I and Bolia went to sleep; afterwards about 3 o'clock at night, Musst. Memeri awoke me, and said that Bolia was dead, on which I got up and placing my hand on him, found that his stomach was distended, and that he was dead, I did not see my mother and Bolia eating the opium and food, I heard it from the deceased Bolia. Afterwards my mother, Parooah, taking medicine recovered completely. The thannah darogah came and made inquiries and said that Lushkur Dome had given some pounded poison to Musst. Memeri to give to my mother, Musst. Parooah, and my father Bolia, and that Memeri had mixed that poison with their food, and eating of which Bolia had died, and my mother's life was endangered. This I know and nothing more.

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The aforesaid Lushkur had five pieces of poison and my father by adoption, Bolia deceased, purchased of him two pieces, one of which he kept in the house and the other about his person. The piece that was in the house the darogah took and sent to the magistrate, but the piece about the person of the deceased, I do not know what became of it with his corpse.

Lushkur Dome, now present, used always to frequent our house, and with Memeri kept talking and whispering together privately. On this account, Bolia, deceased, abused him. This I know.

Musst. Memeri is my sister from the same mother, but of different fathers. She resided with me and my father, Bolia, and my mother, Parooah.

Ameer Ali, No. 3, witness for prosecution.—In the present month of Bhadro, the date I do not recollect, but about fourteen days ago, I was one night about 8 o'clock sitting in the verandah of my house after eating my dinner, on which Musst. Parooah and Bolia Mahout came to me and said that since eating opium that day and their food, their bodies were tingling and they were feeling uncomfortable, on which I knowing them to be opium-eaters and supposing them to be under its influence, advised them to eat some ginger, garlic and acid, on which Musst. Memeri bought some garlic and limes and gave to them, they eat the garlic and limes, and went to their own house, from which Bolia went to Hurruck doctor's, and got some medicine, and he and Parooah used the whole of it. After this I went to sleep. About 4 o'clock at night hearing Musst Memeri crying in Bolia's house, asked what was the matter, she said that Bolia was dead, but how, she did not say. I then told Dookhee Mahout to report the circumstance to the magistrate and he went and reported it. On its becoming morning the convicts went and removed the corpse out of the house for the purpose of taking it to the medical officer. I then saw the corpse from a little distance, but I did not see it properly to be able to examine it.

Bolia and Parooah, when they came to me, said nothing about having eaten poison, but on the darogah's inquiring about it, I heard that Musst. Memeri had produced four or five pieces of poison. This I heard from the darogah, I know nothing more.

Monceram alias Dookhee Mahout, No. 4, witness for prosecution.—About fourteen or fifteen days ago, the month and date I do not know, about 8 o'clock one night, Bolia and his wife called me and said, that since eating their opium and food, their bodies were tingling, after which they went and told Ameer Mohout, and he advised them to eat some acid and garlic. They accordingly eat some acid and garlic, and went to their own house. After this Bolia, for some purpose or other, went to the Kyah Putty, and returning, went to Hurruck doc-

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tor's for some medicine, and bringing some, he, Bolia, and his wife Parooah, used it. They then went to sleep in their own house and I in mine; about morning on the first crow of the cock, the adopted son of Bolia by name, Madhoo Mater, came to me and said that Bolia was dead. I then went and made known the circumstance at the magistrate's bungalow. How Bolia met with his death, I do not know. I saw his corpse from a distance, but what was the matter I could not properly see.

On the night in which Bolia died, I saw the prisoner, now present, Musst. Memeri, cooking dinner in the house of Bolia, but I did not see Bolia and Musst. Parooah eat that food. I heard that they had eaten it from them in person, besides this I know nothing.

I do not know whether there was any poison in Bolia Mahout's or Lushkur Dome's house, neither do I know whether the prisoner Lushkur had any intimacy with Musst. Memeri or whether he used to frequent the house of Bolia Mahout.

When Bolia Mahout and his wife Musst. Parooah told me that after eating their food they felt uncomfortable, they said nothing about having eaten poison, but merely stated that they felt a tingling sensation about their bodies. I then thought within myself that they being habitual opium-eaters, they must have indulged to excess in it, and consequently felt indisposed.

I did not know of Musst. Memeri having kept any poison in the thatch of my house, till the darogah went with Memeri and brought out the poison from my thatch.

Musst. Nadookee, 5th witness for prosecution.—About fifteen or sixteen days from this date, I do not recollect the month or date, about 8 o'clock one night, Bolia Mahout informed Ameer Mahout and others, that he and his wife, Musst. Parooah, after taking their opium and food felt their bodies tingling and their heads giddy. On saying this, Ameer told them to eat limes and garlic, on which Bolia and his wife went to their own house and eat lime and garlic, but I did not see them. Afterwards Musst. Parooah getting worse, Bolia went to Hurruck doctor's house for medicine and bringing some, gave it to his wife. On eating which, she got sick, but I was not told whether Bolia himself had taken any of that medicine or not. After this, I went to sleep in my own house, and what happened afterwards, I do not know. In the morning, about dawn, hearing Musst. Memeri crying and making a noise, I heard that Bolia had died and that his wife, Musst. Parooah, was senseless, but I did not go to their house to see. My husband, Monee Mahout, went and informed the magistrate about it. This I know.

I saw Musst. Memeri cooking some dinner in Bolia's house on the night of his death, but I did not see Bolia and Parooah eat of that dinner,

Lushkur Dome, prisoner, used to frequent Bolia's house and

coax and entice his daughter, Musst. Memeri, on which Bolia abused Lushkur Dome. On the day of Bolia's death, about 3 o'clock, Lushkur Dome came to my house, on which Memeri also came, and she and Lushkur getting together kept whispering to each other. I did not hear what they were saying, as I was inside the house, but I saw them talking to each other.

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I did not know that Memeri had placed poison in my house, but I saw the darogah come with Memeri and take it out of my thatch.

I did not know that there was any poison in Bolia's and Lushkur Dome's house, but after Bolia's death, I heard that the darogah had taken a piece of poison from his (Bolia's) house. I did not see Lushkur Dome give any poison to Musst. Memeri at any time.

When Bolia and his wife said they were feeling ill, they did not say that they had eaten poison.

Shoneebar Cacharree, No. 6, witness for prosecution.—About one month from this date, I do not recollect the month or date, I and Bolia Mahout, after getting fodder for our elephants and returning home, Bolia saw Lushkur Dome in his house and gave him abuse, and said, "Whenever I am not at home you come and coax my daughter, Memeri, and take away my things; do not come again." On saying which, Lushkur Dome went away. I do not know how Bolia and his wife took poison and how Bolia died. I do not know any thing more.

Balchand Kyah, No. 7, witness for prosecution.—In the past month of Assar, about the twenty-eighth or twenty-ninth, I purchased of Lushkur Dome, two annas worth of poison for medicine, but I do not know where he got it from, and besides what he gave me, I do not know if he had any more.

The poison I purchased I made over to the darogah on his asking for it. I do not know any thing about the death of Bolia, deceased.

Buthoo Sycc, No. 8, witness for prosecution.—In the past month of Srabun, I do not recollect the date, one day in the afternoon, about 5 o'clock, I was seated on the road, near my house, at which time Lushkur Dome was going along the road, I asked him where he was going, he said he was going to Basur mater's house, that Basur had taken a piece of poison from him and had neither paid him for it, or returned it to him, and that he was consequently going to his house, saying which he went towards Basur's house. From this I know that Lushkur had some poison, but I never saw any by him.

About twelve or thirteen days ago, about 7 or 8 o'clock in the morning, Musst. Memeri, the prisoner, now present, took from the thatch of Dookhee Mahout's house, five pieces of poison and gave it into the hands of the darogah. This I saw, Memeri then said

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that Lushkur Dome, now present, had given it to her, but why he had given it, she did not say.

I do not know how Bolia met with his death.

If I saw the poison alluded to above again, I could recognize it, and three pieces of the poison taken from Monee *alias* Dookhee's house being shewn to him, he recognized it.

I do not know where the police burkundaz apprehended Musst. Memeri.

Basur Mater, No. 9, *witness for prosecution.*—I do not know how Bolia deceased met with his death, but I heard from others that he had been poisoned. I do not recollect how many days ago or in what month or date, one day about 9 or 10 o'clock, Musst. Memeri, the prisoner, now present, took from Dookhee Mahout's thatch five pieces of poison and give it in the hands of the thannah darogah, this I saw. The darogah at the time shewed me the poison and Memeri said that Lushkur could give some information about it, and said nothing more. If I saw that poison again I could recognize it. It was shewn to him and he said it was what he had seen; but that five pieces were taken out of Dookhee's house thatch, and that there was only three shewn to him.

In the past month of Srabun one day, Lushkur took a piece of poison to my house for sale, and I took it in my hand, Lushkur Dome demanded two annas for it and I returned it to him. He took it and went away. I knew from this that he had poison with him.

I know that Lushkur Dome used to frequent the deceased Bolia's house and have seen him go there.

The darogah apprehended Musst. Memeri in the thannah.

Mr. J. F. Pingault, apothecary in medical charge, No. 10, *witness for prosecution.*—Mr. Pingault examined the remains of Bolia Mahout and states that vegetable poison taken inwardly was the cause of his death.

Hurruck native-dresser, No. 11, *witness for prosecution.*—This witness was present at the *post mortem* examination and corroborates the above, that Bolia died from poison, he did not give any medicine to Bolia Mahout, but by the doctor's orders, he gave medicine to Musst. Paroonh and she recovered.

Kunnye Singh, native doctor, No. 12, *witness for prosecution and witness to the post mortem examination.*—Deposes to the same effect.

Poal Kagoli, No. 13, *witness and Pooram Kagoli, No.* 14, *witness for prosecution and confession at the thannah.*—These witnesses state that Memeri confessed at the thannah of her own free will and consent. They are also witnesses to the apprehension of Lushkur Dome.

Ghunlugga and Hurri Churn, Nos. 15 *and* 16, *witnesses for*

prosecution.—These witnesses attest the voluntary confession of Musst. Memeri, before the magistrate.

Pooma Dome, No. 17, *witness for prosecution.*—Witness to apprehension of Lushkur Dome, by the police mohurer at his house. One day in Srabun last, I do not recollect the date, Lushkur Dome, prisoner, shewed me two lumps of poison for sale, but I did not take it; the next day the aforementioned Lushkur Dome told me that he had sold one lump of the same to Bolia Mahout for one anna, but I did not see the sale effected, and I did not see any more poison in Lushkur Dome's hands, I know nothing more.

Confession of Musst. Memeri, at the thannah.—On the 30th August, or 15th Bhadro, on a Wednesday, in the afternoon, Lushkur Dome, cowherd, gave to me, for the purpose of giving it to Bolia Mahout to eat, about three annas weight of pounded bark or root of a tree and also three or four pieces not pounded, saying it was medicine. I mixed the pounded medicine in some vegetable food for the purpose of giving it to Bolia to eat. Bolia eat it, and saying he was poisoned, commenced to be uneasy and before dawn of the morning of the following day, Bolia died. I then knew that what Lushkur Dome had given as medicine, was poison.

The three or four pieces not pounded I hid in the thatch of Dookhee Mahout's house, and on the darogah demanding it, I went and gave it to him.

In the past month of Choitro, I came from Patbor to my mother's husband, Bolia's house, and he used to abuse and beat me at times, on which Lushkur Dome told me, on giving me the medicine, that by giving it in the vegetable food to Bolia, he would not abuse or ill-treat me, saying this in Dookhee Mahout's house, he gave it to me. I then in cooking some vegetable and rice, put the medicine into two cups; the cup in which I had put the poison mixed with the vegetable, Bolia and my mother eat out of, and saying that they were poisoned, they put the vegetable cup towards me and I immediately threw it into some water, and they both became senseless and Bolia died. When Lushkur gave me the poison, there was no one present. Lushkur Dome used always to go to my father's house and he thinking he used to come to coax and entice me, used to abuse him and forbid him to come, this is the cause of ill-will between them.

The poison taken from [illegible] house was given by Lushkur Dome in the hands [illegible] my mother [illegible]d she gave it to me to [illegible]. I put it in the thatch of the house. The darogah hearing that some poison [illegible] with me, demanded it, and my mother pr[illegible]ed and gave it [illegible]

Defence [illegible] *eri, before the jury.*—[illegible] no witnesses to [illegible] defence [illegible] Musst. Parooah, is my mother and

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she was the concubine of Bolia. I remain with them and Lushkur Dome used to come to our house and coax me for rice, *kannee*, salt, &c., and on this account my mother and Bolia always abused me. Lushkur Dome told me that by giving them a kind of medicine they would be better disposed towards me, saying which, he gave me some pounded medicine about four annas weight and five pieces whole, and told me that by first giving them the pounded medicine they would be well inclined towards me, but should they not, then I was to give them the other five pieces pounded. I then took those five pieces and hid them in the thatch of Dookhee Mahout's house and the pounded medicine I mixed up with some vegetable food and gave to my mother, Musst. Parooah, and Bolia. On eating which, Parooah's life was endangered and recovered, and Bolia died. I did not mix any poison with the opium. The remainder of the vegetable that Bolia and my mother had partaken of, I threw away into some water. I have no other defence to make.

Defence of Lushkur Dome, before the jury.—When the thannah darogah first questioned Musst Memeri, she made no mention of my having given her poison, how is it that two days after she said that I had given her some? The night that Bolia died by eating poison he sent his son, Madhoo, to me, about 12 o'clock at night, and had me brought to him, on which I fell on his neck and cried, why did not Musst. Memeri then say that I had given her poison to administer to him; besides this, I sold Bolia two pieces of poison, but from his house only one piece was produced, what became of the other piece has not been specified. I never gave Musst. Memeri any poison or medicine. I have no other defence to make.

Opinion of Jury.—By the papers of the case and Musst. Memeri's confession before the magistrate and at the thannah, it appears that Lushkur Dome, prisoner, gave Musst. Memeri some poison, saying it was medicine, which poison she mixed up with some vegetable and gave to her mother, Musst. Parooah, and Bolia, and on eating a little of which, the poison began to affect them, and they not eating any more, Musst. Memeri threw the remainder into the water. If Musst. Memeri [illegible]d not know that the medicine she had got from Lushkur Dome and mi[illegible]d with the food she had given to Bolia was poison, why did she throw away whatever remained. [illegible] is evident she was aware that it was poison, she was giving to Bolia, [illegible] it is [illegible]ear from H[illegible] doctor's deposition, that B[illegible] died fro[illegible] eating poison, and [illegible] find her guilty of the wilful [illegible]rder of Bolia, deceased, an[illegible] endangering the life of her [illegible]other, [illegible] Parooah; alth[illegible]gh [illegible] appears that Lushkur D[illegible]t. [illegible]meri the [illegible]iso[illegible]s not clearly proved, [illegible]t suspicion of his havi[illegible]poison, although no one saw [illegible]e it to

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Musst. Memeri, we therefore cannot convict him of being an accessary before the fact in administering poison.

Opinion of the Officiating Deputy Commissioner.—It appears from the record of this case that both the prisoners, Musst. Memeri, No. 1, and Lushkur Dome, No. 2, were on intimate terms, and that No. 1, prisoner's step-father, the deceased Bolia, as well as her mother Paroosh, did not approve of the intimacy, and Bolia forbid Lushkur Dome, No. 2, prisoner, from coming to his house. No. 1, prisoner confessed that No. 2, prisoner, gave her medicine to mix up with the food to give to her parents, which he told her would make them treat her more kindly, and accordingly she mixed the medicine with the food and shortly after her parents had partaken of it, Bolia died and her mother recovered after being medicated.

No. 2, prisoner, pleads not guilty. The jury find No. 1, prisoner, guilty of wilful murder and acquit No. 2, prisoner. The magistrate concurs with the jury in convicting No. 1, prisoner, of wilful murder and No. 2, of being an accessary before the fact; excepting the confession of Musst. Memeri, No. 1, prisoner, the evidence against her is only circumstantial, no person saw her mix up the poison with the food before she gave it to her parents, and there is no proof of her having with malice prepense administered the poison to cause the death of her parents, but there is no doubt that Bolia her step-father died from the poison she put into his food, and the medical officer after examining the body of the deceased, Bolia, states that his death was caused by eating some kind of vegetable poison.

It is very probable that Musst. Memeri, No. 1, prisoner, listened to the suggestions of Lushkur Dome, No. 2, prisoner, and was weak-minded enough to believe that his medicine would conciliate her parents towards her, as it is scarcely credible that a woman would wilfully poison her own mother and step-father, because they disapproved of her intimacy or connection with Lushkur Dome, No. 2, prisoner, for if bent on enjoying his company against her parent's consent, she could have followed the general practice of the country and have left her parent's residence and lived with the man of her choice. I am led to the conclusion therefore that in ignorance she mixed up poison with the food which she gave to her parents and thereby caused the death of Bolia, but she had no intention of poisoning her parents with the view of depriving them of life, and was deceived by Lushkur Dome's having supplied her with poison instead of medicine.

In the absence of positive proof of premeditated wilful murder, I would suggest that she be imprisoned for fourteen (14) years with labor.

There is no direct proof against No. 2, prisoner, that he gave poison to No. 1, prisoner, and directed her to give it to her

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parents, but the accusation of No. 1, prisoner, is very strong against him and the circumstantial evidence adduced proves that he had poison in his possession and was in the habit of selling it, and he admits in his defence that he sold two pieces of poison to the deceased Bolia; he was moreover forbidden to come to the deceased Bolia's house and was at enmity with him. I likewise place great confidence in Musst. Memeri's accusation that he gave her medicine to administer to her parents, and as he knew it was poison, his guilt seems as great, if not more so than No. 1, prisoner; he bears a bad character and has been twice imprisoned for burglary one year and six months, and one year. Under all the circumstances of the case, I consider him guilty of being a wilful accessary before the fact, and recommend that he be sentenced to fourteen (14) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.) We do not find on the record any legal proof against the prisoner, No. 2; if such were forth-coming, his offence would amount to wilful murder, and nothing less than a capital sentence would suffice. It is not proved by evidence that he gave the other prisoner, No. 1, that which she gave to her parents, and which it appears was the cause of the death of her father-in-law. We therefore acquit prisoner No. 2.

In regard to prisoner, No. 1, we are willing to give her the benefit of the ignorance she pleads as to the exact nature of the drug she mixed in the food of which her parents partook, but she must be held responsible for administering that which on strong presumption we consider to have been the cause of death. We therefore sentence her to five (5) years' imprisonment with labor suited to her sex.

PRESENT:
B. J. COLVIN, ESQ., *Judge.*

GOVERNMENT AND BUNYAD SONAR
versus
MUSSUMMUT GUNGNEE.

Sarun.

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Case of MUSSUMMUT GUNGNEE.

The prisoner (a female) convicted of murdering a child, was sentenced to imprisonment for life.

CRIME CHARGED.—Wilful murder of Inderjeet Chokra.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 28th November, 1854.

Remarks by the officiating sessions judge.—The prisoner pleads *not guilty* to the charge of wilful murder.

The circumstances of the case are as follows. The plaintiff is nephew of the prisoner, an old woman of about sixty years of age who has, since the death of her husband about two years ago, been living with the plaintiff's family and taking care of the child Inderjeet about three or four months old, son of the plaintiff Bunyad. On the evening of the 12th ultimo, plaintiff heard, when at his shop close to his house, that the defendant with his child were missing and had been missing about an hour. Search was immediately made in all directions for them and continued during the night but without success, but early on the following morning witness* No. 16, Mussummut Luckputtia going for water to a well in the midst of a large open field belonging to Rungoo, witness† No. 13, heard groans, on nearing it, and fearing to go on, ran home and alarmed her neighbours who immediately proceeded to the spot, and on looking into the well which was twenty-five *haths* deep to the bottom with the water eight *haths* from the top, discovered the prisoner nearly up to her neck in the water clinging to the side of the well and the child drowned in it. Both were speedily got out by witnesses‡ Nos. 12, 13 and 14, Balgovind, Rungoo and Gokerwa, others looking on, and the child was found to be quite dead, the death having been caused as further shewn by the evidence of the civil surgeon Dr. Fleming,§ by drowning. The prisoner made no reply when asked how she had got into the well, and was at once taken to the plaintiff's house near the well and then to the thannah of this station, within a short distance of which the parties resided. No time was lost in the inquiry. The prisoner was not at first charged with murder by her nephew. Her statement was at once taken, and it was to the effect that

* Witness No. 16, Musst. Luckputtia.

† Witness No. 13, Rungoo.

‡ Witnesses Nos. 12, 13 and 14, Balgovind, Rungoo and Gokerwa.

§ Witness No. 4, Dr. A. Fleming, M. D.

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disgusted with the leavings of the family meals, which was all she got from the plaintiff and his family, she had in spite taken the child with her and fallen with it into the well, and that this statement was voluntarily made is proved by witnesses,* Nos. 1, 2, and 3, Jhubbooram, Seeta Ram and Pilla. She was then without delay sent to the magistrate encamped in the neighbourhood and again made a statement to the same effect proved by witnesses,† Nos. 5, 6, and 7, Ramgopaul, Gunesh and Nouringhylal. These witnesses say that she expressly declared she fell into the well with the view of taking her own, not the child's life, the cause being that above explained, viz., ill-treatment in regard to the food supplied her by the family of her nephew, who had succeeded to her deceased husband's little property. I should observe that in the mofussil confession, the prisoner is noted by the darogah as having said she fell purposely into the well, the term used *kusdan* being one which no common mofussil witness would understand, while the answer of the prisoner on her reaching the magistrate's camp was taken by the mohurrir close certainly to the magistrate, who was not solely intent on this case and then explained to her and read over before the magistrate. The prisoner's defence is, that she was bewitched, and that she never intended to kill the child and by mistake fell into the well.

* Witnesses Nos. 1, 2, and 3, Jhubbooram, Seeta Ram and Pilla.

† Witnesses Nos 5, 6, and 7, Ramgopaul, Gunesh Dut and Nouringhylal.

The moulvee considers culpable homicide only proved against the prisoner, no weapon having been used to take life. I consider the prisoner guilty of wilful murder, for she admits having acted from feelings of revenge caused by the treatment she met with and she confesses to have intended to take her own life, though her resolution failed when she reached the water, as she managed to save herself by inserting her hands between the bricks which supported her body in the water, but had her object not been when she threw herself and child into the well to take the child's life as well as her own, she would have left the child on the ground or not taken it with her from home. I would recommend a sentence of imprisonment for life. I would neither hang her nor transport her, believing that the murder of the infant has been caused by the ill-treatment she has herself received from its father.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner evidently wished to destroy her own life as well as that of the child. I concur in the conviction and sentence proposed.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

GOVERNMENT AND MUSST. BUDHO

versus

SAHAWUN RAI (No. 3,) BHUGUT SINGH (No. 4,) GOWREE RAI (No. 5,) SEWCHURN SINGH (No. 6,) AND ROSE KHAN (No. 7.)

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Case of SAHAWUN RAI & others.

The appeal of the prisoners was rejected, the evidence against them being deemed conclusive of their guilt.

CRIME CHARGED.—Riot attended with culpable homicide of Sewpershad Ahir deceased; 2nd count, assault with wounding.

CRIME ESTABLISHED.—Riot attended with culpable homicide of Sewpershad Ahir deceased.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan, with full powers of a magistrate.

Tried before Mr. Henry Atherton, officiating sessions judge of zillah Sarun.

Remarks by the officiating sessions judge.—The deceased Sewpershad Ahir with Radha Rai plaintiff, employed by Sheopertabnarain, were guarding the orchard of jack trees for their master at mouzah Nowadah, when the defendants on the part of Enayet Alli Ticcadar, attended by a large party of men and it is said Enayet Alli himself, came for the purpose of gathering and carrying off the fruit by force.

The deceased was struck, it is said, by Enayet Alli on the side with a spear and on the belly by defendant No. 3 with a *lattee*, and from the injuries received he expired on the 3rd day following the assault, which took place on the 3rd July last. The most serious injury was, it appears from the evidence of the civil surgeon, that inflicted by Sahawun, defendant No. 3, and there can be no doubt that that occasioned death. Defendants, Nos. 4, 5, 6 and 7, are also proved to have been engaged in the outrage, Bhugut and Gowree taking a more active part than Sewchurn Singh and Rose Khan. The defendants all plead an *alibi*, but do not in my opinion establish it. In concurrence with the opinion of the jury, I find all the prisoners guilty of the crime charged against them, viz., riot attended with culpable homicide of Sewpershad Ahir and sentence them as noted below. The joint-magistrate did not consider the proof sufficient to warrant the committal of Enayet Alli.

Sentence passed by the lower court.—Prisoner No. 3 to be imprisoned with labor in irons for seven (7) years from the 20th September, 1854; Nos. 4 and 5 each to be ditto ditto, without irons for three (3) years and each to pay a fine of one hundred (100) Rs. on or before the 19th October next, or, in default of

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payment to labor until the fine be paid or the term of the sentence expire; Nos. 6 and 7 ditto ditto, without irons for eighteen (18) months each and each to pay a fine of fifty (50) Rs. on or before ditto ditto, or in ditto ditto ditto.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The prisoners appeal, repeating their statements that they have been falsely accused at the instance of Sheopertabnarain, and that they were not near the scene of the occurrence on the day it took place; but we find that four of them were named by the deceased on the 3rd of July, when there was no time to concoct a story against them, and the evidence inculpating them all is clear and consistent. The evidence in support of the *alibis* is very unsatisfactory. We reject the appeal.

PRESENT:

A. DICK AND B. J. COLVIN, ESQS., *Judges.*

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The prisoner acquitted, the evidence being held insufficient for conviction.

GOVERNMENT

versus

HOSSEIN ALLEE.

CRIME CHARGED.—Feloniously offering, uttering, disposing of and putting off two forged acquittances and receipts for the sum of Rs. 2,387-8, purporting to be the receipts of the late Mr. W. D. Brown, with intent to defraud Mr. J. P. Langlois and others, well knowing the said receipts to be forged, on the 8th November, 1853.

CRIME ESTABLISHED.—Uttering two forged deeds.

Committing Officer.—Mr. W. T. Law, second principal assistant to the commissioner of Akyab.

Tried before Capt. G. Faithful, officiating commissioner of Arracan, on the 4th August, 1854.

Remarks by the officiating commissioner.—The prisoner's guilt was fully proved. He was a vakeel of the principal assistant's court and was sued by Messrs. Langlois, McKellar and Co. merchants of this place, for the sum of 5000 and odd Rs. due on account of certain rice transactions. He filed a couple of documents purporting to be receipts for the sum of Rs. 2,387-8, granted by the late Mr. Brown, formerly a member of the firm. Both hand-writing and signature were sworn to as forgeries by Messrs. McMillor and McKellar, merchants of Akyab, who had been long acquainted with the deceased, Mr. Brown, and had been constantly in the habit of seeing his hand-writing and signature; a third witness Mr. Jansen, head clerk of the principal

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assistant's office, and once in the late Mr. Brown's employ, as a writer, deposed to a portion of the signature not being in his hand-writing. The presentation or uttering of the receipts by the prisoner (also admitted by him) was proved by the evidence of the sheristadar of the principal assistant's court, in which they were filed, and a mohurrir. The prisoner declared the receipts to be genuine and that the money therein alleged to have been received was actually paid. He had no witnesses to substantiate his defence. He was sentenced to seven years' imprisonment. Being an old feeble man and unaccustomed to labor, it was not awarded nor irons.

Sentence passed by the lower court.—Imprisonment for seven years without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J Colvin.) The evidence for the prosecution is unsatisfactory and insufficient for conviction. It consists merely of the testimony of three witnesses, who testify that they were familiar with the hand-writing of Mr. Brown, and two of them assert positively, that the writing and signatures on the two documents, A. and B., are not the writing of Mr. Brown. while the third declares, that he cannot swear whether they be or not. This kind of evidence always requires corroboration. The magistrate should have summoned Mr. Langlois to depose to the fact stated by Mr. McKellar, his partner, that the existence of the receipts was not known to them till after the death of Mr. Brown had become known, and both the partners should have been carefully questioned to ascertain whether they had demanded payment of the bond, before instituting their suit.

The civil judge, too, should have filed proofs from the record of the civil suit, that the prisoner, defendant in that suit, had een duly served with notice to answer to the suit, and that he ad not put in any answer, or pleaded the receipts, till after the th of Mr Brown had become known. These points being ved. and likewise the fact established, which is added to the civil ision, that the defendant had asserted that his answer was writ- and brought to the court to be filed on the day the suit was onsuited, that is, long before the death of Mr Brown occurred; but that on looking to the answer it was discovered that the stamp on which it was engrossed had not been bought till several months after the nonsuit, and after Mr. Brown's decease had become known, the testimony of the witnesses in respect of the hand-writing would have been strongly corroborated, and a conviction might have followed, for the prisoner would then have been distinctly informed what evidence was to be brought against him, and might have been prepared to rebut it.

As it is, the evidence of Jansen, (witness No. 3, for the prosecution.) that the prisoner shewed him the two receipts in question, or two very like them, within a month of their being

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given, and about the time the suit was instituted, stands unrefuted, and goes to prove their existence at the time of the suit, and months before the death of Mr. Brown was known. The Court therefore acquit the prisoner and order his release.

The Court observe that the magistrate should have distinctly asked prisoner (after committing him) the names of the witnesses he wished to be summoned for his defence, at the trial in sessions, and recorded the same and taken the other steps to satisfy the sessions court that every endeavour had been made to insure their attendance at the trial, as enjoined in Regulation IX. 1796.

The Court further observe that the two documents A. and B., on which the charge was founded, should have been filed in the record of trial at the sessions. Para. 6. C. O. 16th July, 1836.